Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
ACT 2609 Australia
+61 2 6163 1000

Brisbane
Level 4, Kings Row Four
235 Coronation Drive
Milton, Brisbane
QLD 4064 Australia
+61 4 3367 6900

Adelaide
Level 21
25 Grenfell Street
Adelaide
SA 5000 Australia
+61 8 8424 2352

moulislegal
commercial + international

19 August 2025

The Director, Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2600

By email

Dear Director

Celsa Barcelona
Submission in response to Statement of Essential Facts 660

We refer to the Statement of Essential Facts ("SEF 660") pertaining to Continuation Inquiry 660, as published by the Commission on 6 August 2025.

1 Procedural unfairness and unsupported outcomes

Our client Compañía Española de Laminación, S.L. (hereinafter "Celsa Barcelona"). Celsa Barcelona expresses its strong disagreement and disappointment with SEF 660.

Insofar as Celsa Barcelona is concerned, the process by which SEF 660 has been brought into being has denied our client basic procedural fairness, and the report itself is deficient of essential facts that might justify its recommendations.

SEF 660's proposal that the anti-dumping duty can and should be secured with respect to Celsa Barcelona for another five years at the end of the preset five-year cycle, and at a higher rate than presently imposed, is ridiculous.

The Commission is directed, by way of Ministerial Direction, and therefore according to law, to conduct itself as a "best practice regulator". We refer to the following ministerial expectations of the Commission:[1]

> *I expect you to lead a world-class trade remedies authority. I expect your advice, recommendations and decisions to be developed and discharged in line with relevant legislation; Australia's international obligations; and to be robust, evidence-based and provide certainty for all users of the anti-dumping system.*
>
> *In your role leading a best practice regulator, my expectations are that you:*
>
> - *…*
> - *maintain public trust and confidence in anti-dumping investigations and other related processes*
> - *continue the commission's high level of transparency for individual matters, in line with requirements of the Customs Act 1901 and Australian Government privacy and information access rights and requirements* [underlining supplied]

Assuming that "all users" includes Celsa Barcelona as a foreign exporter, SEF 660 and the inquiry to which it refers has fallen well short of these expectations.

Celsa Barcelona's criticism of SEF 660 is founded on the significant concerns we now outline.

2 Falsity of alleged margin of dumping

Firstly, Celsa Barcelona takes issue with SEF 660's falsehood that exports from Celsa Barcelona were found to be dumped, at dumping margin of 12.4%, as a result of the Commissions assessment of "*Dumping During the Inquiry Period*".

This is clearly false, because the SEF also acknowledges that no such dumping could possibly have existed. Why? SEF 660 plainly demonstrates "why":[2]

> *CELSA did not export the goods to Australia during the inquiry period*
>
> *…exports from CELSA have not been evident in recent years*
>
> *Spain did not export the goods during the inquiry period*
>
> *…there have been no imports from Spain since 2021*

How is it possible for the Commission to find a 12.4% "dumping margin" with respect to Celsa Barcelona during the inquiry period when there have not been any imports from Spain since 2021?

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1 https://www.industry.gov.au/publications/statement-expectations-anti-dumping-commission

2 SEF 660, pages 25, 46, 50, 66, 68

Neither the Commissioner nor the Minister can "determine" an export price, when no such price existed, because there were no such exports.

Section 269TAB(3) provides as follows:

> *Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.*

This relies on exports for its operation. This is clear from Section 269TAB(1), which kicks-off the export price determination provision of the *Customs Act 1901* with these words:

> *For the purposes of this Part, the export price of any goods exported to Australia is:*

In all cases, the operating assumption is that there are exports for which an export price needs to be determined. The Commission's attempt to assign an "export price" to Celsa Barcelona when it had no exports, and to suggest that Celsa Barcelona is somehow dumping or will likely dump the goods to Australia at a margin of 12.4% in the future is an unlawful fabrication.

3 False accusation of unreliability

Notwithstanding the fundamental illegality of SEF 660's export price determination, and therefore also its subsequent dumping margin determination, as exposed above, we also take issue with the stated basis of the export price determination itself.

SEF 660 cites two bases for its determination of the "export price" that do not exist. The first is SEF 660's observation that *"only a small volume of goods were exported outside of Europe"* by Celsa Barcelona during the inquiry period, and that the sales data provided by Celsa Barcelona contained *"limited information and critical information such as invoice date, date of sale and related party sales, were omitted"*.[3] This is both a false accusation and unacceptable characterisation of the facts.

Celsa Barcelona provided information pertaining to its third country sales as part of its response to the exporter questionnaire ("REQ") as the Commission requested. Such information was provided in Celsa Barcelona's response to Section F of the REQ dated 13 February 2025. At no point in the inquiry did the Commission raise any issue concerning the REQ. That is because the information provided by Celsa Barcelona in response to Section F was fully and precisely as requested by the questionnaire issued by the Commission.

If the information is considered by the Commission to have been "limited" in any way, such limit arises from the design and wording of the Commission's questionnaire itself, and not because Celsa Barcelona withheld any information or did not provide adequate information in its response. Specifically, we respond to the false allegation that *"critical information… were omitted"* as follows.

(a) **invoice date and date of sale** – The Commission's information collection worksheet "F-2 Third country sales" neither requests nor allows the reporting of invoice date. The information collection template requests information to be reported at a country and customer level, rather

[3] SEF 660, page 46

than at a transaction or invoice level. As such there was no omission on the part of Celsa Barcelona.

(b) **related party sales** – Celsa Barcelona very clearly stated, in its answer to question F-1.2 of its REQ, that *"[t]here are no third country customers related to Celsa"*.

(c) **limited information** - Celsa Barcelona provided all of its customer information as requested by the F-2 Third country sales worksheet and responded to all questions. If there is any limitation, then it is entirely of the Commission's doing as the author of its own questionnaire. Further, the Commission did not engage in any questioning of Celsa Barcelona to remedy what it claims in SEF 660 to have been *"limited information"*.

The Commission's failure to engage with Celsa Barcelona, in the course of an inquiry that has already extended to 8 months, on matters which it now thinks are relevant and important, and which are now offered-up as a basis for arriving at assumptions that are prejudicial to Celsa Barcelona, is worse than egregious.

4 No one thinks Poland is Spain

Just as irrelevant is the export price that SEF 660 used for the purpose of determining the price of the goods exported from Spain to Australia that did not exist. The random export price that the Commission fastened upon is claimed to have been an export price of the goods from Poland to Australia during the inquiry period. SEF 660 proposes that to determine the price for Celsa Barcelona's non-existent exports from Spain to Australia the Commission will adopt *"ABF import data for the goods exported by CELSA's related entity from Poland 'CELSA Huta Ostrowiec' (CELSA Poland)"*.[4]

This proposal causes us much consternation on our part and understandable confusion on the part of our client. We must ask the following questions:

(a) Is it the Commissioner and the Minister's obligation to consider the likelihood of dumping and suitable level of dumping duty on exports from Spain, or Poland? The answer to this question must be "Spain". The subject measure concern exports from Spain (except Nervacero S.A) and Korea.

(b) Should the export price of Spain to Australia be determined by the export of the goods from Spain, rather than from another country that has nothing to do with Spanish exportation nor the subject measure? We believe the answer must be "Yes".

(c) Does SEF 660 insinuate that there is some kind of transshipment of exports from Celsa Barcelona in Spain to Australia, via Poland, so as to make Polish exports a suitable basis to determine export price between Spain and Australia? We do not think so, and there has not been such behaviour in any case.

(d) Is there any Australian domestic or international law that directs or allow an investigating authority to use the export price of the goods from Poland to Australia, as the export price of goods from Spain to Australia. To the best of our knowledge, the answer must also be "No".

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[4] SEF 660, page 46.

The Commissioner and ultimately the Minister must make their respective recommendations and determinations in accordance with law, based on positive evidence, with objectivity, and without bias. SEF 660 does not meet these expectations.

5 Secrecy masks illegality and offends natural justice

If Section 269TAB(3) provides any option for an "export price" in circumstances where there were no exports (which it doesn't) and if exports from Poland could be considered for relevance in that context (which they can't), why wasn't any of this put to Celsa Barcelona? It is the Commission's standard practice to give cooperative exporters a verification report and/or dumping margin calculation of some sort, in an investigation or inquiry where it goes to the trouble of calculating such values.

Celsa Barcelona has not been afforded any transparency with respect to the calculations of Celsa Barcelona's normal value nor the export price proposal, nor the resultant dumping margin arrived at. The Commissions' multiple failures in this regard are indefensible.

SEF 660 acknowledges Celsa Barcelona's status as a cooperative exporter in this inquiry. Indeed, Celsa Barcelona has consistently cooperated with every investigation, review, and inquiry conducted by the Commission over the last ten years, regardless of its level of exports to Australia. This shows respect for the Australian Government and Australian industry. It has allowed Celsa Barcelona to develop an ever stronger understanding and appreciation of the concepts of dumping and how an exporter should manage its export trade to avoid being found to have dumped and to have caused material injury thereby. Does the Commission think that exporters participate in inquiries like this because they would like to engage in dumping in the future? Is it thought that being subject to ridiculous recommendations of future guilt like the one Celsa Barcelona faces here is good for public relations?

SEF 660 raises serious doubts about the fairness of the Commission. We make these observations in that regard.

(a) Celsa Barcelona was not given any details about the calculation and deprived of any ability to either verify or scrutinise the information used by the Commission, prior to the publication of the SEF.

(b) Celsa Barcelona's request for access to the calculation and the data pertaining to the calculation has been flatly denied, even after the publication of the SEF.

(c) Celsa Barcelona was unable to exercise its lawful rights as an interested party exporter before now, and will not be able to exercise its rights to respond to the SEF, because at no time has it been allowed access to the documentary source and/or calculations that are said to show that non-existent exports from Celsa Barcelona were dumped and are likely to be dumped at a dumping margin of 12.4%.

Interested parties cannot have confidence in the conduct of an international trade investigation such as this when the investigating authority conducts itself in a way that communicates disregard for and actively misrepresents the information provided by the cooperative exporter; uses irrelevant data (which we also assume, in this case, was unsolicited and unverified); makes no disclosures about material matters and provides no explanations for its conduct on the public record. These concerns are intensified when it is realised that the unfavourable information that is intended to be relied upon by the Commission has perhaps been provided by a party or parties who oppose Celsa Barcelona's engagement in the Australian market.

SEF 660 has been arrived at in secrecy with respect to issues that are of critical importance to the treatment of our client. The Commission's continued denial of transparency and natural justice with

respect to its determination concerning Celsa Barcelona fails the "best practice" standards the Minister has mandated the Commission must apply in conducting its investigations and inquiries.

6 Why such an inexcusable bias?

Celsa Barcelona acknowledges the policy pressures and expectation that the Commissioner might be subjected to, in the context of global trade tensions and a domestic industry applicant showing signs of sustained financial and economic stress.

None of this can be said to have been contributed to by Celsa Barcelona, which has not exported to Australia since 2021. The measure has been in place for 10 years. Celsa Barcelona was found to be dumping in only one period over those 10 years! The SEF suggests that Celsa Barcelona has been found *"dumping in all except one period"*.[5] This is what advertising executives would refer to as "spin", defined as:

> *a form of propaganda, achieved through knowingly providing a biased interpretation of an event*

The SEF's statement, by pointing to the two dumping margins (from Report 264 and Report 380[6]) determined for the *same* original investigation period[7] prior to the imposition of the measure in 2015 and the only period (review period for Review 566) in the ten years since the ant-dumping duty came into existence, as "*dumping in all except one period*", is irresponsible and unsafe.

In another attempt to overcome the lack of objectivity shown towards Celsa Barcelona over the course of many such procedures, we recount these facts:[8]

(a) Despite enjoying a 0% duty rate measure for more than 12 months following the first continuation inquiry, Celsa Barcelona has never taken advantage of the 0% duty rate. It did not export any shipments of the subject product to Australia under such duty rate. That is, Celsa Barcelona's commercial decisions and sales planning are not centred around the Australian market or taking advantage of a low or no Australian dumping duty. This is a fact that directly contradicts any allegation or insinuation by Infrabuild that expiry of the present measure would be causative to the recurrence of dumping and any associated injury by Celsa Barcelona.

(b) A revised duty rate of 9.4% was applied to exports from Celsa Barcelona from 16 December 2021, based on the dumping margin determined in Review 566. This high dumping margin was mostly due to the unexpected outbreak and disruption of Covid-19, which caused abnormal increase to the ocean freight component of Celsa Barcelona's Australian sales orders that were negotiated in February 2020. Those shipments were made under the original dumping duty, prior to the 0% duty rate coming into place. As such, the high dumping margin reflected an isolated and exceptional historical circumstance that would be unlikely to repeat.

(c) Celsa Barcelona has a strong focus on sustainability and profitability rather than market expansion. This is reflected in the information presented in Celsa Barcelona's REQ, which shows

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5 SEF 660, page 57.

6 Review 380 was initiated solely for the purpose of re-stating the dumping margin determined for Celsa Barcelona with respect to the original investigation period of 1 July 2013 to 30 June 2014, following the ADRP Report 34.

7 The original investigation period was 1 July 2013 to 30 June 2014

8 Celsa Submission, EPR660-16, page 4

that its focus has moved away from export markets for rebar, irrespective of the existence and non-existence of any dumping duty or its available capacity.

If, for whatever reason, the Commissioner still believes that he can be satisfied that the legal requirement under Section 269ZHF(2) has been met and that it is open to him to recommend securing the continuation of the measure with respect to exports from Celsa Barcelona, then he should at least propose a measure that reflects such contemporary evidence of facts. The actual margin of dumping from Celsa Barcelona has been 0% since at least 2021, because it has not engaged in exportation of the goods to Australia. Even if continuation of the measure against Celsa Barcelona can be justified, it should not exceed 0% or a floor price based on the Celsa Barcelona's contemporary normal value for the goods. In this way, any future exports, if any, must necessarily be entered into Australia at a non-dumped level. Celsa Barcelona notes that this would also be consistent with the Minister's determination in the first continuation inquiry, being Inquiry 546.[9]

Celsa Barcelona understands that the Commission has relevant and reliable information pertaining to the calculation of Celsa Barcelona's normal value for the goods during the inquiry period. Celsa Barcelona urges the Commission to consider calculating such normal value and floor price option and stands ready to check the proposed calculation, and to provide its comments accordingly.

7 Other submissions

Pursuant to Section 269ZHF(3)(a)(iv) of the *Customs Act 1901*,[10] the Commissioner must have regard to this submission in deciding on the recommendations to be made to the Minister in the Commissioner's report.

In the SEF, the Commission declares that:

> *The Commissioner has decided not to have regard to CELSA's submission received on 31 July 2025. The submission was received less than one week prior to the due date for publishing the SEF and to consider this submission would, in the Commissioner's opinion, prevent the timely placement of the SEF on the public record*.[11]

Given the finality of that declaration and the wording of Section 269ZHF(3) and (4), we refer you to Annexure A of this submission, being a resubmission of Celsa Barcelona's 31 July letter, as part of Celsa Barcelona's response to the SEF 660.

8 Concluding remarks

Celsa Barcelona respectfully submits that the SEF does not provide a legally and factually sound basis for the Commissioner to be satisfied that the subject measure should be secured for another five years with respect to exports by Celsa Barcelona.

Celsa Barcelona reserves its right to provide further comments in response to SEF 660 and the Commission's proposed recommendations therein. In particular, Celsa Barcelona reserves its right to provide further comments concerning the Commission's proposed dumping margin calculation, once

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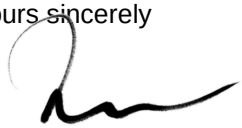
9 ADN 2020/111

10 References to Sections in the context of legislative enactments are references to the *Customs Act 1901* unless otherwise indicated.

11 SEF 660, page 16.

Celsa Barcelona is given access to sufficient details of the proposed calculation for that purpose, and without prejudicing its position that as there are no exports, these can be no export price.

Yours sincerely



Charles Zhan
Partner and Head of International Trade
charles.zhan@moulislegal.com