PUBLIC RECORD

21 August 2025

Director, Investigations 2
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

BY EMAIL:
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Dear Director,

***Continuation Inquiry No. 660* concerning certain Steel Reinforcing Bar exported from the Republic of Korea and the Kingdom of Spain (except Nervacero S.A.)**

STATEMENT OF ESSENTIAL FACTS NO. 660:
RESPONSE OF THE AUSTRALIAN INDUSTRY

InfraBuild (Newcastle) Pty Ltd (**InfraBuild**), makes this submission in response to *Statement of Essential Facts No. 660* (**SEF 660**) on behalf of the Australia industry producing like goods, as the applicant for this continuation inquiry. We refer to the preliminary findings of the Anti-dumping Commission (**commission**) and provide the following observations and comments in response.

At the outset, InfraBuild acknowledges the commission's considered and insightful analysis, based on the facts and evidence before them. The recommendation that measures be continued for the Korean and Spanish exporters (subject to this inquiry), are well founded and evidence based. InfraBuild agrees with the commission's approach and observations concerning the following matters in assessing and justifying the necessity for continuation of the measures:

- CELSA maintains excess production capacity, has retained ACRS accreditation and has previously supplied one of the largest importers of rebar in the Australian market. The CELSA Group switched supply source to CELSA Poland when effective measures were imposed on CELSA in 2018.
- Third country sales data provided by CELSA was deemed unreliable with critical information omitted. The finding that CELSA Poland's export price is suitable for determining an export price for CELSA under subsection 269TAB(3)[1] is entirely appropriate.
- The invoice date best reflects CELSA's material terms for domestic sales and is therefore the date of sale.

[1] Statutory references in this submission are to provisions of the *Customs Act 1901*, unless expressed otherwise.

- Exports have continued from Korea since the measures were first imposed and have increased significantly during the 'inquiry period'.[2]
- The "combination method" of interim duty calculation remains the most appropriate "form of duty" for exporters from Korea and Spain of a commoditised product such as rebar.

The commission's analysis of import volumes and patterns of trade in the Australian market also reflects a clear understanding of the prevailing price sensitivity and the price advantage (and resulting export volumes) afforded to exporters who are dumping. The commission's assessment of importer activity and behaviour further demonstrates a high level of understanding of the extent and nature of importer and trader entities in the Australian market and changes in rebar sourcing in response to imposition of or changes in measures that have occurred over time.

The level of disclosure provided throughout the report is also commendable as the transparency around processes and findings provides InfraBuild and other interested parties a reasonable insight into the analysis approach taken by the commission and helps to identify only the remaining points of contention or clarification. Accordingly, we raise the following matters for further consideration by the Commissioner of the commission in settling his final recommendations to the Minister. For convenience, where referenced, paragraph numbers are as they appear in SEF 660:

Matters requiring further consideration

1. Section 269TAC(8) Adjustments

Dongkuk:

InfraBuild has been unable to find the '*further details concerning the manner on which the specification adjustment was applied*' (at [6.3.1.3]) in Dongkuk's exporter verification report and requests that the commission clarify the nature of the s.269TAC(8) specification adjustment applied, specifically we are seeking clarification of whether:

→ **Using domestic sale surrogate model P-C-C-B-C-N for comparison to export model P-C-C-C-C-N, was the adjustment to normal value applied for Dongkuk upwards or downwards?**

Daehan:

- ***Warehousing and inventory carrying costs***

InfraBuild notes that Daehan has claimed domestic costs (at [6.3.2.4]) relating to '*warehousing* and *inventory carrying'* be deducted from the normal value to ensure comparability of normal values to export prices. It is not clear; from the SEF or the commission's file note outlining their assessment of

[2] The 'inquiry period' was defined upon initiation of this inquiry as the period commencing 1 October 2023 and ending 30 September 2024.

variable factors for Daehan; what the difference is between these two inventory related costs or what evidence was relied upon in recommending these adjustments be made?

We note that in *Review of Measures No. 486*, Daehan also claimed domestic inventory carrying costs. In that case, the verification team performed a review of Daehan's inventory ledger and revealed '*Closing balance statements show stock was held of grades that included not only grades relevant to the domestic market but grades exported to Australia and other export markets*.[3]' On that occasion, the Commission denied the exporter's claim for adjustment.

We further note in *Continuation Inquiry No. 566*, Daehan again claimed a domestic inventory cost adjustment, on the basis that '*domestic sales of like goods are taken from inventory and Australian export sales are produced to order*'.[4] The verification team again '*reviewed inventory ledgers/balances at various points of the review period and found that rebar sold on the domestic and Australian market was held as stock*' and the claim was denied.

It is InfraBuild's conclusion that it is unlikely that anything has changed in relation to warehousing arrangements for this exporter. Therefore, InfraBuild requests that:

→ **Daehan's inventory ledger again be scrutinised at various points in the inquiry period to assess whether any exported goods (grades of rebar not made to the Korean Standard) or other goods, such as, further processed cut and bent goods are present. If so, the domestic adjustment claims for warehousing and inventory carrying costs must again be denied.**

- ***Domestic insurance support expense***

InfraBuild is not aware of this adjustment previously being claimed by Daehan and does not understand the circumstances in which insurance support would apply solely to domestic sales of rebar. We further note that Dongkuk, the other (verified) Korean exporter; whose costs and sales have been compared to Daehan's costs and sales in this inquiry; has made no claims for this adjustment or any of the domestic warehousing and inventory carrying costs adjustments. Therefore, InfraBuild requests that:

→ **public disclosure of the commission's rationale and evidence examined in deciding to grant this adjustment for Daehan**; noting the Manual's guidance in respect of cost-based adjustments '*where based on costs, it is subject to the principle that adjustments will be made only where evidence indicates that price comparability has been affected*.'[5]

2. Mapping of grades to MCCs (for Daehan)

InfraBuild welcomes the level of transparency provided in publishing the MCC mapping of minimum yield strength specified by product standard for the published grades of rebar produced by Dongkuk

[3] EPR 486/009 at p. 14.
[4] EPR 566/016 at p. 24.
[5] *Dumping and Subsidy Manual* at p. 51.

(at [6.3.1.5(i)]). This affords an interested party a reasonable understanding of the nature of the confidential information provided. Specifically, the level of disclosure provides confidence to the Australian industry that the mapping of grades to MCC subcategories is technically sound and InfraBuild agrees with the grade assessment performed by the commission.

With respect to the assessment of Daehan's variable factors, the file note and SEF provides no disclosure of the mapping of grades applied. We note that Daehan's grades of rebar in lengths and in coils produced to the relevant standards are publicly disclosed in *Attachment A-2.11 (Company Brochure)* to Daehan's *Response to Exporter Questionnaire*.[6] Therefore, InfraBuild requests that:

→ **the commission publicly disclose their assessment of the mapping of grades to MCC subcategories for Daehan, or alternatively, confirm whether the published Dongkuk grade mapping was also consistently applied to Daehan's sales.**

InfraBuild further observes that in *Continuation Inquiry No. 546*, the verification team in reviewing Daehan's sales noted:

> '*In examining Daehan's product codes, the verification team observed that goods of a specific nominal diameter were designated "C" in respect of the MCC subcategory of nominal diameter, rather than the correct designation of "B" applying the Commission's MCC subcategory parameters.*'[7]

And that:

> '*Australian sales of coiled products of a certain nominal diameter were assigned the MCC subcategory of "C" by Daehan to align with its internal pricing model*.'[8]

Applied here, this gives InfraBuild cause to request that:

→ **the commission review the MCC mapping performed by Daehan in relation to coil diameter to ensure appropriate comparisons have been made.**

3. Export price determination for Daehan and Dongkuk

InfraBuild notes that:

- '*Intermediary traders were involved in **all** Daehan's export sales during the inquiry period*' and as such, '*the export price has been determined as the price between Daehan and the intermediary traders*'[9];

[6] EPR 660/004.
[7] EPR546-014 at p. 4.
[8] EPR546-014 at p. 9.
[9] SEF 660 at p. 43.

- '*an intermediary was involved in **some** of Dongkuk's export sales to Australia during the inquiry period*'[10];
- '*an increase in the volume of imports from Korea in recent year, with the bulk of those imports sourced by the same importers*'[11]; and
- rebar sales by the importers of the goods exported from Korea into the Australian market were found '***not to be profitable during the inquiry period…***'[12]

This raises a number of urgent questions concerning the arms length nature of the goods imported from Korea, and as a consequence, the correct or preferable decision with respect to how the Korean exporters' export price should be determined under the Act.

Dongkuk sales to Australian importers – arms length under s.269TAA?

The question of whether sales between Dongkuk and the Australian importers were arms length within the meaning of subsection 269TAA is raised given the commission's finding that all sales by importers of the goods exported from Korea were unprofitable during the inquiry period.

In relevant part, subsection 269TAA(2) provides:

> (2) Without limiting the generality of subsection (1), where:
>
> (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
>
> (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;
>
> the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price. [emphasis added]

It is InfraBuild's contention that all sales between Dongkuk and the Australian importers should not be treated as arms length transactions under s.269TAA(1)(c) by reason of the provisions of subsection 269TAA(2) being satisfied.

Accordingly, it is not appropriate for the commission to recommend to the Minister that the export price for sales by Dongkuk to an Australian importer be determined under s.269TAB(1)(a) because such purchases by the importer cannot satisfy sub-paragraph (ii), namely the arms length nature of those transactions. Instead, the commission should properly determine the export price under s. 269TAB(1)(b), deductively.

[10] SEF 660 at p. 39.
[11] SEF 660 at p. 53.
[12] SEF 660 at [8.4] (Non-injurious price)

Dongkuk and Daehan sales to Australian via intermediaries – arms length under s.269TAA?

InfraBuild has difficulty reconciling a number of contradictory findings, which tends to make it conclude that for sales by Daehan and Dongkuk to Australia via intermediaries there is either:

- consideration payable for or in respect of the goods other than their price, within the meaning of s.269TAA(1)(a); or
- the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or, within the meaning of s.269TAA(1)(b); or
- the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price, within the meaning of s.269TAA(1)(c).

InfraBuild is led to this conclusion by the following facts disclosed in SEF 660:

Firstly, exports by Dongkuk and Daehan are currently subject to a variable amount of interim duties set by their individual floor prices.

Secondly, since the floor prices for Dongkuk and Daehan were set, their respective ascertained export prices declined during the inquiry period, suggesting that variable amounts of interim duties were collected, if not since their variable factors were last ascertained, then at least across the inquiry period.

Thirdly, there is no record of any Final Duty assessments applied for or determined by importers of the goods from Dongkuk or Daehan.

Fourthly, the commission found '*either the* ***importer not to be profitable during the inquiry period in respect of its sales of rebar*** *or the profit was not relevant to the goods*.'[13]

Finally, given the above facts, it is incomprehensible that the dumping margin for Daehan should fall, and the dumping margin for Dongkuk should rise only by the degree that it has.

This suggests to InfraBuild that the determination of the export price as the price paid by the intermediary to the exporter is neglecting to take into account the circumstances of the sales between the intermediaries and the Australian importers. Therefore, the correct or preferable decision would be for the commission to determine the Korean exporters' sales to Australia via intermediaries using deductive methodologies under s.269TAB(1)(c), having regard to all the circumstances of the exportation, namely, commencing with the price at which the goods were sold by the importer to an arms length purchaser, less:

- any duties of Customs or sales tax paid or payable on the goods; and
- any costs, charges or expenses arising in relation to the goods after exportation; and
- the profit, on the sale by the intermediary to the importer.

[13] SEF 660 at [8.4] (Non-injurious price)

As the commission's finding and recommendation currently stands, an export price for sales via intermediaries based on the price paid by the intermediary to the exporter ignores all the circumstances of the exportation, namely, the sale at a loss of the imported goods into the Australian market.

4. Daehan's revised cost data

With respect to Daehan's revised cost data that was submitted '*almost 3.5 months after Daehan's initial REQ*' and '*seems to be significantly different from the initial data*' with a '*higher variance when compared to Dongkuk's cost data*', it is noted that this is not the first time that this exporter has provided incomplete, irrelevant or inaccurate cost (and sales) data to the commission.

In SEF 546, the commission reported being unable to ascertain Daehan's normal value by the *conventional* legislative means:

> *…the Commission was not satisfied of:*
>
> - *the completeness, relevance and accuracy of a portion of Daehan's sales of like goods on the domestic market; and*
> - *the completeness, relevance and accuracy of Daehan's CTMS in respect of the goods and like goods.*[14]

As such, it would be entirely permissible in the current circumstances for the commission to again treat Daehan's cost data as unreliable under subsection 43(8) of the *Customs (International Obligations) Regulation 2015.*

5. Barter sales and assessment of domestic sales to related customers

In *Section 3.3.2* of the file note relating to Daehan's variable factors assessment, sales to unrelated customers (at [3.3.2.1]) are examined with no mention of any sales to related domestic customers. This causes InfraBuild to ask, whether:

→ **For Daehan, were any related domestic customers identified and sales examined?**

InfraBuild notes that the verification report for Daehan in *Review of Measures No. 489* assessed sales to '*one subsidiary company (Daehan Networks Co., Ltd.).*'[15] Daehan's *Annual Report* for the 2023[16] calendar year shows two other related steel producer/processor/distributor affiliates, namely, Daehan Steel Sales Co., Ltd and YK Steel Co., Ltd. The sales reporting for 2023[17] shows that YK Steel Co., Ltd, does not produce 'Bar-in-Coil', only rebar in lengths. Therefore, the question arises:

[14] SEF 546, p. 38.
[15] EPR 486/009 at p. 3.
[16] Non-Confidential Attachment 1 - Daehan Annual Report 2023 - subsidiaries
[17] Non-Confidential Attachment 2 - Daehan Annual Report 2023 - sales

→ **For Daehan, were domestic sales to any of these related entities identified and examined (in either the 'barter' sales or the non-barter 'commercial' sales)?**

The *Annual Report* for Daehan for 2023 shows that domestic sales of rebar in coil constituted 98.97% of total coil sales for Daehan by value with the balance being export sales. Presumably this domestic sales revenue includes revenue from barter sales.

division	Business division	Sales type	Item		Cumulative total for 2023
Daehan Steel Co., Ltd.	Steelmaking/rolling		Bar-in-Coil	export	762,542
				Domestic demand	73,420,079
				BIC total	74,182,621

※Unit: KRW 1,000

The file note assessing Daehan's variable factors reports barter sales where '*Daehan sold to certain customers in exchange for other rebar*' under a '*barter arrangement*' and that '***prices for barter sales were generally higher*** *than its commercial sales*.'

For Dongkuk, the *Exporter Verification Report* states:

> *'The commission verified Dongkuk's barter sales and assessed the price setting mechanism. The commission found that because* ***Dongkuk does not negotiate on the final invoice price with its counterparty for these sales, Dongkuk's barter sales are materially higher than nonbarter sales*** *during the period.*
>
> *'Consistent with the commission's previous approach with barter sales for rebar sold in the Korean domestic market and* ***the higher invoice price for barter sales****, the commission is satisfied that the barter sales are* ***not in the ordinary course of trade*** *and will exclude these sales from the dumping margin calculation.'*[18]

Prior to settling on this conclusion, InfraBuild requests commission further interrogate whether:

→ **the barter sales have any associated revenue?**
→ **In satisfying itself of the completeness and relevance of Dongkuk and Daehan's domestic sales, is all revenue attributable to identified sales of goods?**
→ **How are barter sales quantified or accounted for in the exporter's accounting systems?**

We are concerned that higher value domestic sales (including MCC subcategory "C" coil with diameter greater than 16mm) have been concealed as barter sales and therefore excluded from the domestic sales relevant to an assessment of the normal value.

The representative for both Daehan and Dongkuk has been involved in rebar verification activities (at least for Daehan) since 2015. He is aware that the Commission will, for the sake of 'consistency'

[18] EPR 660 at p. 12.

with previous investigations tend to exclude 'barter' sales from the normal value calculations. Indeed, even at the point of REQ, Daehan appears to have already excluded these sales from any consideration by the Commission, '*XXXXXXXX is a related company but all sales to XXXXXXXX are Barter Sales outside the ordinary course of trade, which have been excluded from DAEHAN's normal value calculation*'[19]. Therefore, InfraBuild requests:

→ **that the 'barter' sales transactions and relevant documentation for both exporters be carefully reviewed to ensure that they continue to pass the evidentiary test for valid exclusion from the normal value sales and are not simply excluded on the basis of 'consistency' with previous treatment or because there is a '*generally higher invoice price for barter sales*'[20]**.

It may well be that larger diameter coils sell for a premium in the Korean market which is reflected in the higher invoice price observed for the 'barter' sales and these sales ought to be factored into the normal value calculation. Inclusion may permit comparison with the 20mm coil exported to Australia thereby negating the need for a s.269TAC(8) specification adjustment based on a surrogate 12-16mm diameter coil.

6. Form of Measures

InfraBuild agrees with the following findings made by the commission in SEF 660:

- *'The number of export models of the goods from Korea is not large, nor is there a significant price disparity between the models'* (at p. 66);
- *'Dongkuk's form of duty should be amended to a combination duty, as this method is the most appropriate form of duty in the current circumstances for all exporters from Korea' (at* p. 67);
- *'Exports of rebar from other countries are subject to a combination duty, which indicates that this is a reasonable duty method for rebar generally'* (at p. 68); and
- *'The combination duty method is the most appropriate form of duty in the current circumstances for exporters from Korea and Spain'* (at p. 68).

InfraBuild further concurs with the commission's view that '*a combination form of duty for Dongkuk is supported by the forms of duty guidelines*'.

While Dongkuk claims that its export sales structure is straightforward, specifically that it '*undertakes its export operations to Australia in a transparent and uncomplicated sales structure*'[21], InfraBuild would argue that the opposite, is true. The commission has found that some of Dongkuk's export sales to Australia are via an intermediary. InfraBuild submits that Dongkuk has at least two

[19] EPR660/004.
[20] File note at p. 11.
[21] EPR 660/009 – *Dongkuk Steel Mill Co. Ltd – Submission on form of duty*.

related affiliates or subsidiaries likely involved or likely to imminently become involved in export or import activities involving sales to Australia – INTERGIS and Dongkuk CM.

INTERGIS[22] is Dongkuk's distribution affiliate, handling *'port loading/unloading, inland transportation, marine transportation, and international logistics services'*.

In April 2025, it was reported that *'Dongkuk CM, a subsidiary of the Dongkuk Steel Group, marked a significant milestone in its international expansion strategy by inaugurating its Australia office'*.[23] InfraBuild further notes the stated intention of Dongkuk CM to establish a local presence in Australia as *'part of a strategic effort to enhance its global footprint and tap into Oceania's burgeoning construction market.'*

Apart from the related party subsidiaries, the commission's *Dumping Commodity Register* reports a channel for steel reinforcing bar exported from Korea as *'Dongkuk Steel Mill Co., Ltd supplied directly through: Lava Corporation; or POSCO International Corporation'*.

Taken together, Dongkuk's past, and prospective, export sales structure is not straightforward.

In response to Dongkuk's view that the *ad valorem* duty method '*effectively counters dumping without undue burden or inequity*', InfraBuild observes that the risk of duty absorption by Dongkuk and Daehan with very low dumping margins determined at 2.5% and 2.3% respectively, remains a very real scenario, rather than "a potential disadvantage" under the *ad valorem* form of duty. Despite the Guidelines' best intentions when drafted in 2013, this scenario is unable to be remedied by an anti-circumvention inquiry as the legislation simply does not address circumvention activity by the exporter. This is a legislative loophole that the representative for both Korean exporters in this matter was keenly aware of in the original rebar *Investigation No. 264*, where he made a representation on behalf Daehan:

> *'An exporter subject to interim dumping duties that simply lowers its export price cannot in any way be considered a circumvention activity as defined. Whilst the applicant continually refers to the avoidance of the intended effect of duty, it is important to note that s. 269ZDBBA(5A) of the Act, which deals with the avoidance of the intended effect of duty as a circumvention activity,* ***relates to an importer*** *selling the imported goods in Australia without increasing the price commensurate with the total amount of duty payable.* ***It does not relate to an exporter*** *reducing its export prices'.*[24]

Undeterred by the *ad valorem* measures imposed following *Investigation No. 264*, within five (5) months, Daehan was able to exploit the weakness of both the *ad valorem* measures and anti-circumvention framework, by lowering its export price at a greater rate than its normal value[25] (thereby dumping exports at rates in excess of the 9.7 per cent originally determined). This resulted in a period of increased dumping which was incapable of remedy.

[22] https://www.dongkuk.com/en/affiliate/distribution
[23] https://www.businesskorea.co.kr/news/articleView.html?idxno=239669
[24] EPR 264/074 at p. 2.
[25] EPR 452/016 at p. 21.

In summary, the Commissioner's proposed recommendation that interim dumping duty be calculated using the combination duty method for all goods exported to Australia from Korea and Spain is firmly supported by InfraBuild as the most effective form of measure to ensure that injury to Australian industry caused by dumped rebar from these sources has the best chance of being remedied.

Conclusions

To discuss any aspect of this submission, please do not hesitate to contact your InfraBuild representative on record.

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT