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The Director, Investigations 1
Anti-Dumping Commission
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Investigation No. 705: Steel flat bar exported from Taiwan

Dear Director,

We represent Feng Hsin Steel Co., Ltd (Feng Hsin), a producer and exporter of steel flat bar in Taiwan and an interested party to this investigation. This submission addresses the material injury and causation claims set out in InfraBuild's application and in Consideration Report 705.

The material injury framework

Section 269TAE(2A) of the Customs Act 1901 (Cth) (the Act) provides that, in making a determination of material injury, "the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

(a) the volume and prices of imported like goods that are not dumped; or

(b) the volume and prices of importations of like goods that are not subsidised; or

(c) contractions in demand or changes in patterns of consumption; or

(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry; and

any such injury or hindrance must not be attributed to the exportation of those goods".

Section 269TAE(2AA) then provides that "[a] determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities".

Among the "relevant economic factors" that the Act defines for the purpose of the injury determination are "(b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods" and "(c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry: (i) for which there are sales or forward orders;

or (ii) which are held as stocks". Capacity utilisation and stocks are therefore statutory injury factors.

The Ministerial Direction on Material Injury 2012 directs that "[i]njury caused by other factors must not be attributed to dumping or subsidisation. However, I direct that dumping or subsidisation need not be the sole cause of injury to the industry. Whether dumping or subsidisation is the sole cause of injury or whether there are other contributing factors, I direct that the injury caused by dumping or subsidisation must be material in degree". InfraBuild's response to the importer submissions relies on the second of those sentences. The first and third sentences carry the same weight, and it is those two that the information to date does not satisfy.

The Commission's own policy describes what non-attribution requires. The Dumping and Subsidy Manual states that "[i]n examining the effects of the other factors, the Commission accepts that the purpose is to 'disentangle' their effects from those of the dumping or subsidisation. A judgement must be made as to whether these factors have not acted in such a way to 'break the causal link' that may have seemed apparent between the dumped or subsidised imports and the material injury". The Manual also records that "[t]he coincidence in movements in dumped imports (import volumes, market share, and prices) and the movements in relevant injury factors may not, of itself, prove causation as the Commission will carefully examine all of the available evidence, including the effects of other factors, when reaching a reasoned conclusion".

On demand, the Manual states that "the injury can be caused by a declining demand for a particular product driven by, for example, changes in consumer preferences for a substitute product that incorporates new technologies; non-price factors such as inferior quality, performance and service; or general economic conditions causing a decline in demand for the product in question. These will be taken into account where relevant".

The Manual is also explicit on the period from which causation may be inferred: "[a] causal link between dumped imports and material injury may be established only in circumstances where indicators of material injury are identified as being present during an investigation period in which dumped goods are found have been exported to Australia. There can be no presumption that goods exported to Australia before the commencement of the investigation period are dumped goods". The investigation period is 1 April 2025 to 31 March 2026. Movements in the applicant's prices, costs and profits before that date are context. They are not injury caused by dumping.

Section 269TAE gives effect to Article 3.5 of the Anti-Dumping Agreement, which requires that "[t]he authorities shall also examine any known 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. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry". The Appellate Body has held that "[t]his provision requires investigating authorities, as part of their causation analysis, first, to examine all 'known factors', 'other than dumped imports', which are causing injury to the domestic industry 'at the same time' as dumped imports. Second, investigating authorities must ensure that injuries which are caused to the domestic industry by known factors, other than dumped imports, are not 'attributed to the dumped imports.'" and that "[i]f the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors"[1] .

Against that framework, Con 705 contains no analysis under s 269TAE(2A) at all. The subsection is not cited. The only treatment of other factors is the applicant's own statement, reproduced in Table 15, that "InfraBuild does not consider that there are factors other than dumping that have caused injury to the Australian flat bar industry. Whilst it has recognised there was a general contraction of the market during the injury analysis period, the loss of market share experienced by the Australian industry exceeded this and is reflective of the injury caused by dumped exports, as opposed to the normal ebb and flow of business". That is an assertion by the applicant. It is not an examination by the Commission, and it cannot be the basis of a determination that s.269TAE(2AA) requires to be "based on facts". Feng Hsin accepts that Con 705 is a consideration report and applies the "reasonable grounds" threshold of s 269TC. But a preliminary affirmative determination under s.269TD, and the securities that follow it, require the Commissioner to be satisfied of material injury caused by dumping, and the record described below cannot support that satisfaction.

Australian market dynamics

The applicant's own indexed table of sales quantities gives the following annual series, indexed to the year ending March 2023:

Year ending March	2023	2024	2025	2026
InfraBuild sales	100	103	84	73
Imports from Taiwan	100	110	94	103
Imports from other sources	100	108	95	101
Total Australian market	100	106	89	87

Source: Application, section A-5, question 6, p.28.

The table settles the following before anything else is considered. The market fell by 13 per cent from the base year to the investigation period. InfraBuild's own figure for the contraction is 12.8 per cent. Over the same four years the volume of Taiwanese imports rose by 3 per cent. InfraBuild's sales fell by 27 per cent. The Commission's own assessment, on the more reliable ABF data, is to the same effect with "the size of the Australian market peaked in the 12-month period ending (PE) March 2024 and has been decreasing from that point to the PE March 2026. The

[1] Appellate Body Report, United States – Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, paras 222 and 223.

market size in the PE March 2025 and PE March 2026 were both lower than the beginning of the injury analysis period".

The year-by-year movements matter more than the end points. In the year ending March 2024 the market grew by 6 per cent, Taiwanese imports grew by 10 per cent and InfraBuild's sales grew by 3 per cent. No volume injury is possible in that year. In the year ending March 2025 the market fell by 16 per cent, Taiwanese imports fell by 15 per cent and InfraBuild's sales fell by 18 per cent. Every participant lost volume together, and Taiwanese imports lost almost as much as InfraBuild. That is the signature of a contraction in demand, which is the factor named in s 269TAE(2A)(c), and not of displacement by imports. Only in the investigation period, the year ending March 2026, do the series diverge: the market fell a further 2 per cent, Taiwanese imports recovered from 94 to 103, and InfraBuild's sales fell from 84 to 73.

Even in that final year the arithmetic does not support the finding in Con 705 that InfraBuild lost volume "to the detriment of the Australian industry" because of Taiwanese imports. InfraBuild held 49 per cent of the market at the start of the injury analysis period on its own figures, and Con 705 records that it has "by far the largest market share of the Australian industry". Taiwanese imports were therefore a smaller volume than InfraBuild's sales in the base year. A 3 per cent rise on the smaller base cannot account for more than a small fraction of a 27 per cent fall on the larger base. On InfraBuild's own indices, and taking Taiwan's base volume at its highest possible level of equality with InfraBuild's, Taiwan's absolute gain over the four years is at most about one ninth of InfraBuild's absolute loss. The remainder of the applicant's lost volume, which is the greater part of it, went somewhere outside of the market.

Con 705 does not perform this arithmetic. It describes Taiwanese imports as having "increased over the injury analysis period, gaining market share within a contracting Australian market" without stating the size of the increase in absolute terms, and it moves directly from a relative share gain to a finding of volume injury caused by dumping. A market share gain in a contracting market is a denominator effect. Every supplier whose volume held steady gained share, and on the applicant's table imports from other sources, which no one says are dumped, gained share at almost the same rate as Taiwan (101 against 103 on the base year). The Commission's finding that other imports "remained relatively stable" is equally true of Taiwan, whose four-year movement was 3 per cent.

The applicant's own response to the importer submissions on the public record concedes the point in substance. It accepts that "[i]mports of fabricated structural steel containing some flat bar may have contributed to this contraction in market size for all market participants, including importers". That is an acknowledged change in the pattern of consumption within s.269TAE(2A)(c) and Article 3.5. InfraBuild's answer is that its share of the contracting market also fell. But a fall in share, on its own, says nothing about cause. The Commission must examine why demand for flat bar fell, whether that fall weighted more heavily on InfraBuild's product range and customer base than on imports, and what part of InfraBuild's lost volume the contraction accounts for. None of that has been done.

Two additional matters are relevant to the segment in which the contraction occurred. First, the Commission has adopted a model control code structure for the investigation, and InfraBuild's submission of 4 August 2026 maps Feng Hsin's published grades onto that structure. Feng Hsin's catalogue on the record shows the grades it produces to AS/NZS 3679.1 and to ASTM specifications. Whether the fall in Australian demand was concentrated in grades, sizes or specifications that Taiwanese mills do not supply is a question the MCC data will answer, and Feng Hsin asks that the Commission examine it expressly. Second, InfraBuild itself states that the imports of its related distributors "consist predominantly of large flat bars (>150mm width) or small/thin flat bars (<4.75mm thickness) outside the range produced by InfraBuild". If InfraBuild's own distribution channel is sourcing from imports goods that InfraBuild does not make, the conditions of competition between the imported and the domestic product are not those of head-to-head substitution across the whole goods description, and the Commission's coincidence analysis needs to be conducted at the level at which the products actually compete.

Finally on volume, the coincidence analysis relied on in Con 705 runs from a date the applicant selected. Table 15 reproduces the applicant's claim that "[s]ince July 2024 there has been a correlation between rising volumes of dumped imports from Taiwan and a corresponding decline in InfraBuild's quarterly sales volumes". The injury analysis period begins in April 2022. The first nine quarters are left out of the correlation because they do not support it. Across those quarters Taiwanese volume and InfraBuild's volume rose and fell together with the market. Selecting the window in which the series diverge, and discarding the window in which they move together, is the opposite of an objective examination.

Feng Hsin therefore asks that the Commission, in the SEF, state the absolute volumes of imports from Taiwan, from other sources and of Australian industry sales in each year of the injury analysis period in indexed non-confidential form derived from ABF data. It asks that the Commission identify the causes of the contraction in demand and the part of InfraBuild's lost volume that the contraction accounts for, perform the non-attribution analysis that s.269TAE(2A)(c) requires, and conduct the coincidence analysis across the whole injury analysis period rather than from July 2024.

Capacity utilisation, production and stock trends unexplained by imports

The applicant supplied indexed data on its capacity, capacity utilisation, production and stocks. The series are:

Year ending March	2023	2024	2025	2026
Maximum capacity	100	97	100	99
Capacity utilisation	100	87	42	91
Production quantity	100	116	84	75
Closing stock	100	245	46	472
InfraBuild sales	100	103	84	73
Total market	100	106	89	87

Sources: Application, section A-5, p.28; section A-9, pp 39 to 42; section A-10, p.57.

Capacity utilisation is a statutory injury factor under s 269TAE(3)(b). Con 705 reports the capacity index but does not report the utilisation index at all, and its conclusion on the other injury factors is that "employment (headcount) for like goods, productivity, wages and capacity have remained relatively similar across the injury analysis period. At this stage it is inconclusive whether these factors are indicative of injury and will be further considered during the investigation". The utilisation series is not "relatively similar" across the period. On the applicant's own figures, it fell to 42 in the year ending March 2025 and rose to 91 in the investigation period, the year in which the applicant's sales were at their lowest.

The three series cannot be reconciled with one another. Utilisation is production divided by capacity. With capacity at 97 and production at 116, utilisation in the year ending March 2024 should have been about 120, not 87. With capacity at 100 and production at 84, utilisation in the year ending March 2025 should have been about 84, not 42. With capacity at 99 and production at 75, utilisation in the investigation period should have been about 76, not 91. In every year after the base year the reported utilisation figure is inconsistent with the reported production and capacity figures, and in the two most recent years it is inconsistent in opposite directions. Either the series measure different things, or one of them is wrong. The Commission has not identified which, and it cannot rely on any of them until it has.

The closing stock series is the same. Stock rose to 245 in the year in which the market and InfraBuild's sales both grew, fell to 46 in the year in which InfraBuild's sales fell by 18 per cent, and rose to 472 in the investigation period. The applicant attributes the 472 figure to lost sales: "[t]he applicant industry's reduced market share (from 49% to 44%) has resulted in its closing stock-on-hand position increasing significantly (from 46 to 472 – indexation points) during the proposed investigation period when compared to the previous 12-month period". Con 705 appears adopts the claim, but stock is the difference between what is produced and what is sold. In the investigation period InfraBuild's sales were at 73 while, on its own figures, it ran its plant at a utilisation of 91. A producer that raises utilisation into a market in which its own sales are falling will accumulate stock whatever imports do. The stock at 472 is the consequence of InfraBuild's production decisions in the investigation period, is not an effect of dumped imports, and s.269TAE(2A) prevents attributing it to them. The inventory turnover index in Con 705 points the same way, as it rose to 154 in the investigation period , which is not what a tenfold increase in closing stock produces.

The applicant's investment series are also inconsistent with the injury it claims. Capital investment stood at 191, 177 and 126 in the three years after the base year, assets at 136, 133 and 115, and research and development expenditure at 315, 272 and 251. All of them are above the base year in every year. The applicant nonetheless lists "reduced research and development expenditure" among the forms of injury it claims. A series at 251 is not reduced. In its response to the importer’s submissions to date, InfraBuild states that it "is investing in capacity expansion to remain a sustainable operation for the foreseeable future" and refers to an announcement of October 2025, within the investigation period, of expanded capacity at the Sydney facility where flat bar is produced. None of the seven series the applicant supplied on investment, assets, research and development, financing, capacity utilisation, production or revenue per tonne appears in the Commission's injury analysis in Con 705.

Where an industry's own indicators show growth/improvement, the Commission owes "a compelling explanation of why and how, in light of such apparent positive trends, the domestic industry was, or remained, injured"[2]. Con 705 gives none and defers the question to the investigation.

The pattern across these series, taken together, is one of production scheduling, plant reorganisation or capacity work in the years ending March 2024 and March 2025, followed by a decision to run the plant hard in the investigation period regardless of demand. Whatever the explanation, it is internal to the applicant and it is a factor within s.269TAE(2A)(f), the productivity of the Australian industry, or within the residual category of any other known factor. Feng Hsin asks that the Commission, at industry verification, reconcile the applicant's capacity, utilisation and production series with one another and with its production records. It asks that the Commission establish what happened to the applicant's production in the year ending March 2025, when utilisation fell to 42, and why production ran at 91 per cent of capacity in the investigation period while sales fell. It asks that the stock at 472 be explained by reference to production and sales rather than by reference to imports, and that each of the investment series be addressed in the SEF.

Infrabuild's raw material cost, cost to make and price trends

InfraBuild produces its billet from recycled steel scrap in an electric arc furnace at Rooty Hill. It states that "[t]he iron ore, coking coal and steel scrap are sourced locally and account for the significant proportion of total raw material goods used in the Flat Bar manufacturing process". Scrap is a traded commodity with published prices in every major steel market, and for an electric arc furnace producer it is the largest single component of the cost of a tonne of billet. Taiwanese flat bar producers, Feng Hsin among them, are also scrap-based electric arc furnace producers. The price of flat bar from Taiwan, and the cost of flat bar in Sydney, are both driven by the same input.

The applicant's price and cost series are:

Year ending March	2023	2024	2025	2026
Unit cost to make and sell	100	100	97	94
Unit sales revenue	100	87	78.4	77.9

Source: Con 705, section 4.6.2, Table 12, p.24.

Con 705 reasons a finding of price suppression from these two series "while CTMS remained relatively stable over the injury analysis period, declining prices alongside stable costs suggests that price increases, which would otherwise have occurred, may have been suppressed". The Commission's own definition is that "[p]rice suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs". Price suppression, on that definition, is the inability to recover a cost increase. There was no cost increase. The applicant's unit cost was flat for two years and then fell, whilst it prices fell over the first three years and then remainder steady.

[2] Panel Report, *Thailand – H-Beams*, WT/DS122/R, para 7.249

The timing of the price movement is critical. Unit sales revenue fell by 13 per cent in the year ending March 2024 and by a further 10 per cent in the year ending March 2025. In the investigation period it fell from 78.4 to 77.9, a movement of less than 1 per cent. Almost the whole of the 22 per cent decline that Con 705 relies on occurred before 1 April 2025, in years for which there is no finding of dumping and, according to the Manual, "[t]here can be no presumption that goods exported to Australia before the commencement of the investigation period are dumped goods". Within the investigation period the applicant's price was flat, its unit cost fell by 3 per cent, and as shown below, its unit profit rose.

The more important question is why the applicant's unit cost fell by only 6 per cent over four years in which scrap prices in the region fell by a great deal more. Feng Hsin will place its own verified scrap purchase costs and export prices before the Commission in the course of the investigation.

The available price data collected by Feng Hsin to date indeed shows a substantial decline in scrap steel prices from year ending 2023 to year ending 2026. Taiwan scrap (T1H1)[3] prices decreased by approximately 28%, and heavy melting scrap (HMS) prices[4] decreased by approximately 23%. Over the same period, the import unit price of the subject product decreased by approximately 25%. InfraBuild's cost data, however, show a different pattern.

Page	Indexed Table	Sub-item	YE '23	YE '24	YE '25	YE '26
T. A-10.2.1average FIS price for PUI		Imports UP (index)	102	94	87	82
vs. Previous Period				-8%	-7%	-5%
vs. Base Year				-8%	-15%	-20%
T. A-10.2.1average FIS price for PUI		Appl's LG HM Sales UP (index)	99	86	78	78
Taiwan scrap price T1H1		Scrap UP* (USD /MT)	[redacted]	[redacted]	[redacted]	[redacted]
vs. Previous Period				-7%	-14%	-9%
vs. Base Year				-7%	-21%	-28%
HMS=Heavy melting scrap		Scrap UP* (USD /MT)	[redacted]	[redacted]	[redacted]	[redacted]
vs. Previous Period				-6%	-11%	-7%
vs. Base Year				-6%	-17%	-23%
P.39	cost variations	unit CTMS	100	100	97	93
P.39	price variations	unit sales revenue	100	87	78	78

If InfraBuild's cost to make and sell did not follow its principal input, the reason lies in InfraBuild's own cost structure, being the proportion of its cost that is fixed, the effect on unit cost of running production at the levels described above, in the allocation of selling, administration

[3] T1H1 does not represent a standard standalone global scrap grade like ISRI or HMS. Instead, it typically refers to a high-speed tool steel grade (T1) or a localized/regional market nomenclature often combined with heavy melting or specialty steel classifications.

[4] HMS stands for Heavy Melting Scrap (sometimes called Heavy Metal Steel), which refers to recyclable, heavy, and thick iron and steel scrap recovered from dismantled structures, machinery, and industrial objects. The scrap hereto is sourced from the U.S., according to Feng Hsin.

and finance cost to flat bar, which the applicant states is made "based on a percentage of net revenue", or in the cost of the billet it sourced from Whyalla and from imports to supplement its own. Each of those is a factor other than dumping. A domestic producer whose costs do not fall with its input costs, competing with foreign producers whose prices do, is describing the ordinary operation of competition between foreign and Australian producers under s.269TAE(2A)(d) and the productivity of the Australian industry under s.269TAE(2A)(f), and any injury from that source "must not be attributed to the exportation of those goods".

It follows that the correlation on which the application rests, between the applicant's prices and Taiwanese export prices, is not evidence that Taiwanese prices caused InfraBuild's prices to fall. Two scrap-based producers' prices will move together because their costs move together. The Manual is clear that a coincidence "may not, of itself, prove causation", and the Panel in *China – X-Ray Equipment* that "causation and correlation are two distinct concepts"[5]. The applicant also states that it "maintains a market-based pricing policy" and that its offers follow "the direction of the lowest priced import offers being made to its customers". A price set by formula to import parity will correlate with import prices whether or not those prices are dumped and whatever their source. The correlation is a product of the applicant's pricing policy. It is not a finding about Taiwan.

The price comparisons in the application are, in any event, not comparisons of like with like. Table A-10.2.1 sets InfraBuild's free-into-store selling prices against Taiwanese free-on-board export prices. InfraBuild has now accepted that the two "are at different levels of trade and cannot form the basis of undercutting analysis". The only other comparison is in section C-2 of the application, which sets the lowest Taiwanese import price against InfraBuild's average price. Neither comparison satisfies the Commission's stated practice, under which an undercutting analysis compares prices "ensuring that the transactions are made under the same conditions (eg. timing, volume, discounts, delivery, credit, same customer etc.)". No such analysis has been done, and Con 705 makes no finding of price undercutting. The words do not appear in the Commissioner's list of the forms of injury for which reasonable grounds exist.

Feng Hsin asks that the Commission, at industry verification, obtain the applicant's scrap and billet cost per tonne for each year of the injury analysis period and publish a non-confidential index of it in the SEF alongside the unit cost to make and sell. It asks that the Commission establish why unit cost did not move with the input and examine the allocation of selling, administration and finance cost to flat bar. It asks that any finding of price effects be confined to the investigation period and to a comparison of prices made under the same conditions at the same level of trade.

Profit, financing cost and related-party sales

The applicant's profit series and its other financial series are:

Year ending March	2023	2024	2025	2026
Unit sales revenue	100	87	78.4	77.9

[5] Panel Report, China – X-Ray Equipment, WT/DS425/R, para 7.247

Unit cost to make and sell	100	100	97	94
Unit gain or loss	100	54	34	40
Profitability	100	62	43	51
Financing costs	100	142	127	53

Sources: Con 705, Tables 12 and 13, pp 24 to 25; Application, section A-10, table A-10.5.4.6, p.58.

Following the comparison between Infrabuild's unit sale revenue and unit cost, its unit gain or loss and profitability warrant closer examination. As illustrated in the Table above, the magnitude of the decline in the gain or loss as well as profitability appear disproportionate to the movements in the two principal price and cost indicators. From 2023 to 2025, for example, unit sales revenue declined by approximately 22%, while unit cost to make and sell declined by only 3%. Over the same period, however, unit gain or loss declined by 66%, from Index 100 to 34. Profitability also declined by 57%, from Index 100 to 43. The same divergence remained evident in 2026 although unit sales revenue remained broadly unchanged from 2025 and unit cost declined further, the decline in both unit gain or loss and profitability remained substantial. This gap calls for an explanation beyond simply lower selling prices or import competition. The financial and company-specific information may provide several factors to help explain the deterioration and should be considered before attributing it to subject imports.

The applicant remained profitable on flat bar in every year of the injury analysis period. Its own account is that "the Australian industry's weighted average unit prices exceeded its weighted average unit costs across the proposed injury analysis period". In the investigation period its unit profit rose from 34 to 40 and its profitability from 43 to 51. Con 705 acknowledges the improvement and sets it aside because profit "remained significantly lower than at the beginning of the injury analysis period".

The base year against which every decline is measured was the applicant's best year on every series it supplied. The fall from a peak is a fact about the peak as much as about what followed. Con 705 gives no consideration to whether the year ending March 2023 was representative of the industry's ordinary condition, and the Ministerial Direction's caution that the assessment of materiality depends on "the current economic condition of the Australian industry" cuts both ways.

The financing cost series contradicts the application claims. The applicant claims injury "in the form of increased stock-on-hand; increased inventory holding costs; increased financing costs; reduced available working capital; and reduced cashflow". Its own index of financing costs stands at 53 in the investigation period, a fall of 47 per cent on the base year and of 58 per cent on the prior year. The applicant's narrative concedes "[t]here was a decrease in financing costs in the proposed investigation period when compared to previous periods". The explanation that follows that sentence is redacted from the public version of the application. The Commission has not disclosed what the explanation is, whether it has considered it, or how a claim of increased financing costs can stand beside an index showing them halved. A movement of that size in a single year is unlikely to be a flat bar event. Feng Hsin asks that the Commission establish at verification what drove it, whether it reflects a change in the applicant's or its group's financing arrangements, and whether that change also affected the cost series in the years ending March 2024 and March 2025, when financing costs stood at 142 and 127.

The applicant's cost allocation method weighs directly on the reliability of the unit cost and profit series. The applicant states that "[c]osting methodology is by production/sales tonnes. SGA (Selling/Admin, Freight & finance costs) are allocated based on a percentage of net revenue". An allocation of group overhead to flat bar in proportion to flat bar's share of net revenue means that the cost attributed to the product moves with the product's revenue, not with the resources the product consumes. It also means that a change in the revenue of any other product line in the group changes the overhead charged to flat bar. The Commission cannot know, without examining the allocation at verification, how much of the reported unit cost to make and sell, and therefore of the reported unit profit, reflects the economics of making flat bar. Feng Hsin asks that the verification report address the allocation method expressly and test it against a direct cost basis.

A substantial part of the applicant's sales is to related distributors. The applicant identifies several distributors "related to InfraBuild Steel by common ownership", states that "[a]ll distributors, including those that are part of the InfraBuild Group, also distribute imported product", and asserts that "there is no price effect of the association between InfraBuild Steel and its related customers" on the basis of a confidential comparison of weighted average prices to related and unrelated customers. The relevant statutory factor is "the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods". Where the producer and a material part of its customer base are under common ownership, the price at which the goods pass between them determines how much of the group's margin on flat bar is reported at the production level and how much downstream. The applicant's comparison of average prices by grade, if it is what it is described as, tests whether related and unrelated customers paid similar prices. It does not test whether the group's related distributors earned a margin on flat bar that is properly part of the industry's profit on the like goods, nor whether the terms of sale to related customers, including credit, rebates, freight and the timing of price changes, matched those to unrelated customers. Feng Hsin asks that the Commission verify the arm's length character of related-party sales by reference to those terms and not by reference to average price alone, and that it state in the SEF the proportion of the applicant's sales of like goods that were made to related parties in each year of the injury analysis period.

So, it is clear that the applicant was profitable throughout, its unit profit rose in the investigation period, its financing costs halved in that period for a reason it has not disclosed, its unit cost to make and sell is derived by an allocation that moves with revenue, and a material share of its sales are to companies it owns. Those are the facts on which the Commission's prima facie profit finding rests, and none of them has yet been examined. A determination that InfraBuild's profit was injured by dumping in the investigation period, made on this basis, would rest on "allegations, conjecture or remote possibilities" and not on facts.