

12 August 2020

The Director - Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2600

Dear Director,

RE: Continuation Inquiry No. 546 concerning steel reinforcing bar exported from Korea, Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co. Ltd.)

This submission is made on behalf of InfraBuild (Newcastle) Pty Ltd (**InfraBuild Steel**) in reply to Celsa Barcelona's *Response to Export Questionnaire* and Celsa Barcelona's recently published Visit Report and to provide to the Anti-dumping Commission (**Commission**) more recent information that further supports InfraBuild Steel's application for the continuation of measures applying to exports of steel reinforcing bar from Spain (except Nervacero S.A.).

Celsa Barcelona is part of the Celsa Group that its website¹ states is the largest Spanish owned steel company and the second largest European long products producer. The Celsa Group reports that it is Europe's largest producer of reinforcing bar with manufacturing facilities in Spain, Norway, Poland and the United Kingdom.

InfraBuild agrees with the European Commission's view expressed in its submission² that:

An expiry review is a complex investigation as it includes a prospective analysis of what is likely to happen, in case measures are allowed to laps [sic]. This involves an assessment of trends and developments that will take place in the near future.

Whilst InfraBuild Steel notes that the verification team was satisfied that Celsa Barcelona did not export the goods to Australia during the investigation period³, this simply demonstrates that Celsa Barcelona chose not to export to Australia in that period.

The Celsa Group's export strategy to Australia has been to switch sources of export mills from those that have measures imposed on them, to those that do not. After Australia imposed measures on Celsa Barcelona in November 2015 and measures against Nervacero were discontinued following an appeal to the ADRP, Nervacero S.A. became the main source of the Celsa Groups export's to

¹ <http://ingenium.gcelsa.com/about-us> (accessed on 11/08/2020)

² EPR 546/03.

³ EPR 546/013 at p. 5.

Australia until they were also found to be dumping in March 2018. A month after the Commission imposed dumping measures on exports of steel reinforcing bar from Nervacero, imports from the Celsa Group's Polish facility, Celsa Huta Ostrowiec began landing in Australia. This opportunistic pattern of trade in the goods demonstrated by the Celsa Group was explored in the Australian industry's *Application for the Continuation of Measures*.⁴

It is therefore Celsa Barcelona's likely future behaviour beyond the expiry of the measures in November this year that the Commissioner is required to base his decision on. This principle is reflected in the Report of the WTO Appellate Body in *US — DRAMS* ⁵:

*With regard to injury, we believe that an absence of dumping during the preceding three years and six months is not in and of itself indicative of the likely state of the relevant domestic industry if the duty were removed or varied. With regard to causality, **an absence of dumping during the preceding three years and six months is not in and of itself indicative of causal factors other than the absence of dumping.** If the only causal factor under consideration is three years and six months' no dumping, the issue of causality **becomes whether injury caused by dumped imports will recur.**⁶[emphasis added]*

A recent submission by a steel exporter in another matter acknowledged that their export behaviour is likely to be influenced by the timing of a Commission's Review or Continuation Inquiry investigation periods:

However taken in isolation, an exporter's most recent behaviour may not be the strongest indicator of future behaviour. Otherwise, all exporters would aim to ensure they were not exporting at dumped prices in the 12 month period following the imposition of measures, in order to demonstrate behaviour that was likely to continue in the absence of measures. [emphasis added]⁷

The WTO Dispute Settlement Panel in *US — Corrosion-Resistant Steel Sunset Review*⁸ expressed its view on the use of historical data as a basis for the inherently prospective likelihood determination.

"Future 'facts' do not exist. The only type of facts that exist and that may be established with certainty and precision relate to the past and, to the extent they may be accurately recorded and evaluated, to the present. We recall that one of the fundamental goals of the Anti-Dumping Agreement as a whole is to ensure that objective determinations are made, based, to the extent possible, on facts. Thus, to the extent that it will rest upon a factual foundation, the prospective likelihood determination will inevitably rest on a factual foundation relating to the past and

⁴ EPR 546/001, pp. 40-42.

⁵ United States - Anti-dumping duty on Dynamic Random Access Memory Semiconductors (DRAMs) of one megabit or above from Korea, WT/DS99/R, adopted 29 January 1999.

⁶ Panel Report, US – DRAMS, para. 6.59.

⁷ EPR 529/012 at p. 7 (Kukje submission)

⁸ United States – Sunset review of anti-dumping duties on corrosion-resistant carbon steel flat products from Japan, WT/DS244/R, adopted 14 August 2003.

*present. The investigating authority must evaluate this factual foundation and come to a reasoned conclusion about likely future developments."*⁹

The Celsa Group's past behaviour of exporting dumped steel reinforcing bar into Australia from mills that do not have measures on them is a strong indicator that if the measures on Celsa Barcelona were allowed to expire, it is probable that they would recommence dumping and cause a recurrence of injury to the Australian industry.

To assess the prospective likelihood that dumping will continue or recur if measures are not continued, the Commission's *Guidelines for the Application of the Continuation of Measures* lists the following as relevant factors that it will consider:¹⁰

- anti-dumping actions by other countries;
- relevant evidence as to the current normal values in the exporting country;
- whether exports have continued following imposition of the measure and estimates of export price;
- whether the exporter has retained distribution links in Australia;
- whether the exporter retains an excess capacity that may be directed to Australia.

In its application for the Continuation of Measures lodged on 6 February 2020 InfraBuild Steel provided the following evidence that the Commission seeks as relevant information to determine whether dumping and injury will likely recur if the measures were allowed to expire:

- In April 2017, the Celsa Group's two other Spanish mills (Celsa Atlantic S.L and Nervacero S.A.) were found to be dumping steel reinforcing bar into Canada by 37% and 39.6% respectively.
- In March 2018, Nevacero S.A. were found to be dumping steel reinforcing bar into the Australian market by a margin of 6.5%
- Spanish mills within the Celsa Group have continued to export volumes of steel reinforcing bar to Australia.
- Spanish and European mills within the Celsa Group have maintained distribution links via the importer [REDACTED]

⁹ Panel Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 7.279

¹⁰ https://www.industry.gov.au/sites/default/files/2019-05/guidelines_-_application_for_continuation_-_oct18.pdf (accessed on 11/08/2020), p. 3.

- Celsa Barcelona and Nervacero S.A. have maintained third party accreditation (ACRS) to assist market sales of reinforcing bar to Australia.
- Information in relation to the excess steel capacity in Spain.
- Information in relation to overcapacity in global steel markets.

At the time of lodging its application InfraBuild Steel summarized the prospective analysis as follows:

Spanish exporters have continued to export rebar to Australia at dumped prices for extended periods following the imposition of measures and have maintained their distribution links in Australia via their network of importers who have continued to offer to sell rebar exported from Spain into the Australian domestic market. Spanish exporters have also maintained the third-party accreditation to market rebar products effectively in the Australian construction market.

Exporters from Spain have the capacity to increase production of hot rolled products, including rebar, which given the size of actual hot rolled steel production in Spain (13.777 million tonnes in 2018) would be material if exported and sold into the Australian rebar market.

The Australian industry considers that it is likely that the expiration of anti-dumping measures would allow importers to acquire rebar from Spain at dumped prices and in greater volumes. In these circumstances, the Australian industry considers that it is likely that exports of rebar at dumped prices by all exporters (except Nervacero S.A.) from Spain would continue if the measures expire.¹¹

Recent Developments following the initiation of the Continuation Inquiry

At the time that InfraBuild Steel lodged its application in early February 2020, the devastating impact the COVID-19 pandemic would have on world health and global economies was still unknown. Unfortunately, by mid-March 2020, Spain was the most affected country in Europe, after Italy, and the Spanish government declared a state of emergency and placed the country into a lockdown.

the prime minister, Pedro Sánchez, said “extraordinary decisions” needed to be taken as Spain grappled with a “health, social and economic crisis”. Sánchez acknowledged that the measures needed to tackle the coronavirus would have a “big economic impact”....¹²

¹¹ EPR 546/001 at p43

¹² <https://www.theguardian.com/world/2020/mar/14/spain-government-set-to-order-nationwide-coronavirus-lockdown> (accessed on 11/08/20)

Despite the fact that Spain had already endured six weeks of lockdown, Celsa Barcelona's exporter questionnaire dated 29 April 2020 paints a surprisingly buoyant view of the Spanish domestic market.

The Spanish domestic market for steel reinforcing bar has changed considerably since the original investigation. In Spain, the demand for steel reinforcing bar has increased substantially as the Spanish construction market continues to recover from the impact of the global financial crisis initiated in 2007-2008. Please refer to EuroConstruct's Press Release which demonstrates the increasing Construction Markets in Spain and the European Union more widely (available here).

It is even more surprising that the upbeat view of the Spanish demand for steel reinforcing bar was made just a day before a Spanish court granted injunctive relief to Celsa and its group companies vis-à-vis the lenders of its €900 million facilities. This followed Celsa seeking to suspend payment of principal and interest due 4 May 2020 and 4 November 2020 for a year, have a covenant holiday from 1 April 2020 until 31 March 2021 and ban the lenders from accelerating the facilities and starting enforcement actions for a period of one year. Arguments brought by Celsa are outlined below:¹³

*Celsa considers that the restructuring was backed by a viability plan from 2017 to 2022 and that such plan was based on "normal circumstances". They further argue the company has been complying with such plan and with the scheduled repayments and financial covenant measures under such normal circumstances but the **unforeseeable and extraordinary COVID-19 crisis affected the company's business in such a manner that the plan was no longer achievable in its current form. The claimant argues that COVID-19 affected its business and that the stoppage of certain industries as a consequence of the lockdown (notably car manufacturing) and the difficulty to obtain raw materials has had a severe impact on the business of Celsa.***

An event of default in these circumstances could, according to Celsa, trigger an acceleration and fast track enforcement by the lenders that could lead to around 9,000 employees losing their jobs and the company ending up in liquidation. [emphasis added]

It is apparent that Celsa Barcelona's attempted portrayal of strong domestic demand is driven by the expectation that if the Commission is led to believe that their domestic market is strong, it will reduce the likelihood that Celsa Barcelona will have excess capacity of steel reinforcing bar and imply a reduced likelihood that they will dump onto export markets such as the Australian market.

The Commission acknowledged the direct link between excess capacity and dumping in its 2016 Analysis of Steel and Aluminum Report.

¹³ <https://www.ashurst.com/en/news-and-insights/legal-updates/the-risk-of-a-potential-knock-on-effect-of-an-interim-relief---the-celsa-case/> (accessed on 11/08/20)

the OECD has highlighted that ‘excess capacity in one region can displace production in other regions, thus harming producers in those markets’, including through ‘unfair trade practices such as dumping’.¹⁴

Excess capacity—a problem that afflicts the steel industry during every downturn in the business cycle—is a significant issue for the sector¹⁵

Unfortunately, the Spanish construction market and subsequent demand for steel reinforcing bar, is being greatly impacted by the coronavirus pandemic. EuroConstruct (which Celsa Barcelona referenced in its exporter questionnaire response) published a Press Release on 12 June 2020 containing the dire warning that the drop-in the construction market is expected to be of a similar magnitude to that experienced during the global financial crisis in 2009.

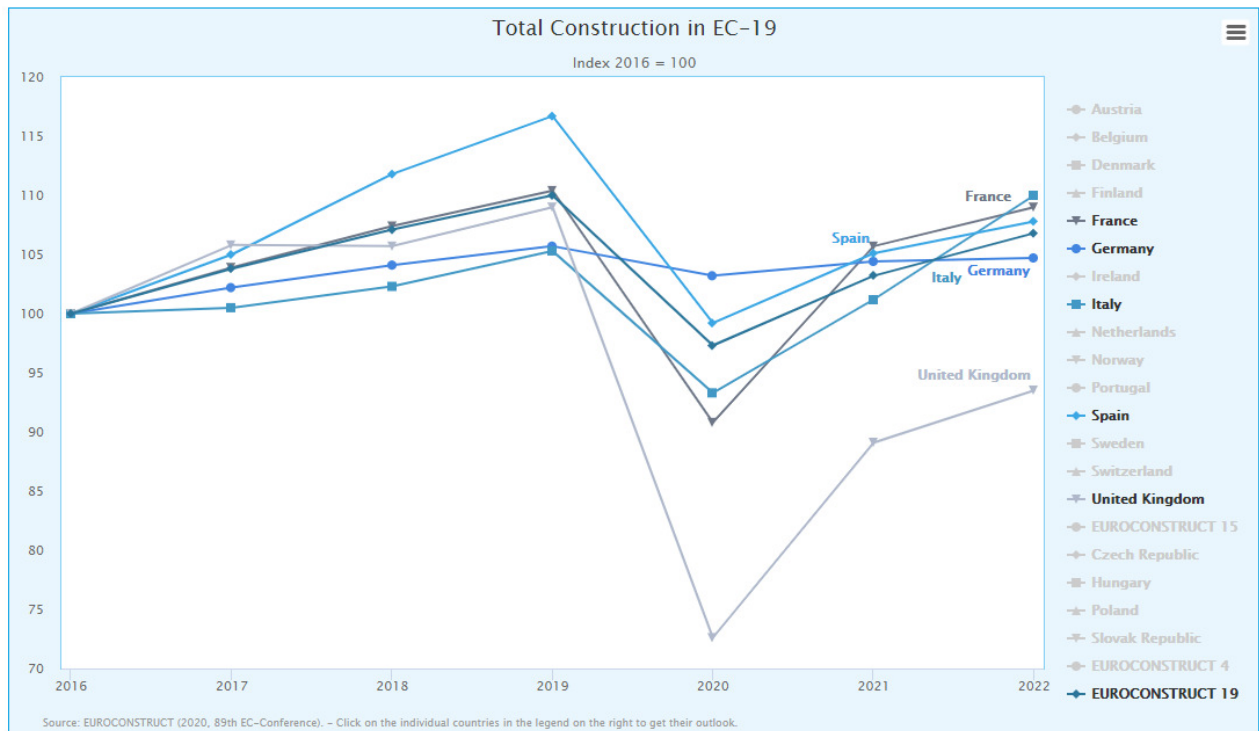
*Nevertheless, much in the world have changed dramatically since the introduction of the coronavirus. As of this, the forecast for 2020 has been revised downwards with more than 12 percentage points, indicating a decline of 11.5 percent. **This drop in construction is in similar size to the drop caused by the global financial crisis in 2009.** Among the “big five” countries, it is only Germany that will see a small decrease (-2.4 percent) in total construction this year, while the rest (France, Italy, **Spain** and the UK) are expecting to have a decline between 12-33 percent. **(emphasis added)**¹⁶*

The published graph in the article shows that Spanish total construction is forecast to fall by 17.5% from a peak in 2019.

¹⁴ https://www.industry.gov.au/sites/default/files/2019-05/analysis_steel_aluminium_report_-_august_2016.pdf at p. 5.

¹⁵ *ibid.*, p. 12.

¹⁶ http://www.euroconstruct.org/ec/press/pr2020_89 (accessed on 11/08/20).



A few days prior to the Euroconstruct Press Release on 8 June 2020, Celsa Group's Chairman and CEO Francesc Rubiralta co-signed a joint European Steel Association (Eurofer) statement providing clarification with regard to steel demand.

*.....sharp collapse in demand following the COVID pandemic....
Steel demand has fallen by 50% since the start of the COVID-19 pandemic in March.¹⁷*

And more recently on the 5 August 2020 Eurofer published an economic report that stated:

*Lockdown measures have gradually been eased across most member states from early May, leading to restart in production and almost complete freedom of movement for citizens. In any case, **the complete lockdown in March and April is almost certain to lead to the worst economic recession ever recorded for the EU as well as other advanced economies. The downturn is expected to be far larger than the 'Great Recession' of 2009-2012 triggered by the financial crisis, resulting in the most severe GDP recession on record for the EU and its individual economies (emphasis added).**¹⁸*

¹⁷ https://www.mlex.com/Attachments/2020-06-08_1Y9SS24Q252Q929/Eurofer_Joint%20Statement%20by%20the%20CEOs%20of%20EU%20steel%20safeguards%20review.pdf, dated 8 June 2020 (accessed 11/08/20).

¹⁸ <https://www.metalworkingworldmagazine.com/files/2020/06/REPORT-Economic-and-Steel-Market-Outlook-Quarter-2-2020.pdf> at p. 4 (accessed on 11/08/20).

Eurofer's forecasts for the construction industry, the biggest driver of steel reinforcing demand are similarly negative:

Prospects for the EU construction sector are hugely impacted by the economic lockdown which European countries experienced from mid-March to early June, with variations in intensity and with some local lockdowns still in place. This has resulted in closures of construction sites, particularly in civil engineering.

...The residential construction market and, particularly, private non-residential subsectors are expected to be impacted the most by the halt in construction production in the course of 2020.

...

Non-residential construction (offices, commercial and industrial buildings), which was already the weakest subsector in 2019 due to subdued investment climate and economic uncertainty, is expected to pay the highest toll to the pandemic-related lockdown. Even after the removal of lockdown measures, the probable continued downturn in the manufacturing industry in the EU will most likely result in delayed investment decisions, with very little benefit for new non-residential investment.

InfraBuild Steel is concerned that the forecast poor economic outlook for Spanish construction demand indicates that Celsa Barcelona which has significant excess capacity is likely to recommence dumping into the Australia market.

The last time there was a large collapse in the Spanish construction market occurred during the Eurozone financial crisis in 2013 and 2014, the same period that Celsa Barcelona were found to be dumping rebar into the Australian market.¹⁹

[The following graphic has been redacted in its entirety as it contains licensed subscription based material]

¹⁹ <https://www.statista.com/statistics/602765/spain-construction-industry-as-a-percentage-of-gdp/> (accessed on 11/08/20)

Celsa Barcelona's recent export activity to Australia (history repeating itself)

Export statistics indicate that Celsa Barcelona is again actively targeting Australia with aggressive pricing of steel reinforcing bar. One month after the commencement of the continuation inquiry period, exports statics show that exports of steel reinforcing bar from Barcelona to Australia recommenced at dramatically reduced prices.

[The following table has been redacted in its entirety as it contains licensed subscription based material]

It is also concerning to note that the prices that Celsa Barcelona has been exporting steel reinforcing bar to Australia are significantly lower than the prices they are selling at to their European neighbours.

[The following chart has been redacted in its entirety as it contains licensed subscription based material]

Therefore, the above evidence indicates that it is likely that, since the end of the continuation inquiry period, Celsa Barcelona has already recommenced dumping to Australia.

Conclusion

InfraBuild Steel submits that the evidence before the Commission, including:

- the past behaviour of the Celsa Group's Spanish mills dumping into Australia (Celsa Barcelona in 2015), Canada (Celsa Atlantic & Nervacero S.A. in 2017) and Australia (Nervacero S.A. in 2018).
- Celsa Barcelona's recent recommenced rebar exports to Australia at prices lower than that of exports to its European neighbours.
- the forecast prolonged weak Spanish and global construction market demand for rebar products;
- Celsa's increasing excess capacity and the fact that Celsa have maintained their distribution channel to supply reinforcing bar to the Australian market,

provides compelling evidence to support InfraBuild Steel's view that if the measures against Celsa and other Spanish exporters were allowed to expire, that Celsa would very likely recommence dumping reinforcing bar onto the Australian market.

As InfraBuild Steel's domestic prices of reinforcing bar are directly influenced by the prices of imports, any recommencement of dumping activity will continue to cause material injury to InfraBuild Steel.

FOR AND ON BEHALF OF

THE AUSTRALIAN INDUSTRY