

9 September 2020

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

BY EMAIL:
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Dear Director,

Continuation Inquiry No. 546 concerning Steel reinforcing bar exported from Korea, Singapore, Spain, Taiwan

AUSTRALIAN INDUSTRY RESPONSE TO STATEMENT OF ESSENTIAL FACTS

InfraBuild (Newcastle) Pty Ltd (**InfraBuild**), formerly Liberty OneSteel (Newcastle) Pty Ltd, the applicant and a member of the Australian industry producing like goods to the goods the subject of this inquiry, refers to *Statement of Essential Facts No. 546 (SEF 546)* and makes the following observations and comments in response.

SEF 546

The use of paragraph numbers, headings and sub-headings below follow those contained in the SEF.

3.3.1 Tariff classification

While acknowledging the Commission's comments concerning its consideration of the additional tariff codes nominated by InfraBuild Steel from the subject countries, as this is a continuation inquiry, the Commission should not confine itself only to a consideration of importations of the goods "during" and "prior to the 'inquiry period'".^{1 2} In order to properly consider the question of *whether the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping... and the material injury that the anti-dumping measure is intended to prevent* under subsection 269ZFF(2)³ the

¹ SEF 546, p. 19.

² The term 'inquiry period' is not defined under domestic law or Article 11 of the WTO *Anti-Dumping Agreement*.

³ All legislative references in this report are to the *Customs Act 1901* unless otherwise specified

Commissioner ought not confine his analysis to a prescribed time-frame.⁴ This position was upheld by the Appellate Body in *US – Anti-Dumping Measures on Oil Country Tubular Goods*. Therefore, *...as long as a likelihood-of-injury determination rests on a sufficient factual basis...* it is not necessary to confine or *...specify the time-frame within which the "simultaneous presence" of subject imports and the corresponding injury would be likely to occur.*⁵

Applied here, the correct or preferable decision warrants analysis of the ABF import database for the additional tariff codes nominated by InfraBuild from the subject countries, not just *for* the ‘inquiry period’, and *prior* to the ‘inquiry period’, but also following the ‘inquiry period’. We observe that with an ‘inquiry period’ ending 31 December 2019, there are at least a minimum of six, and a maximum of eight months of additional import trade data that is capable of analysis by the Commission with a view to assessing whether the goods were also imported under the additional tariff codes nominated by InfraBuild.

4.3.5 Structural changes in the market

SEF 546 erroneously identifies Dalian Steelforce Hi-tech Co., Ltd as *...a Chinese producer of rebar...* and *...Steelforce Holdings Pty Ltd and subsidiaries...* as *...an importer of rebar.*⁶ This is not correct; the former entity is not a producer of rebar, and the latter entities are not importers of rebar (although they are distributors of rebar imported by other unrelated parties).

6.3.1.2 [Daehan] Normal value

InfraBuild does not agree with the Commission’s assessment that *...an adjustment to the normal value ascertained in Review 486/489... made with reference to... the movement in the verified ascertained export prices specific to Daehan between the review period relevant to Review 486/489 and the current inquiry period...* represents *...the most reliable information available to it.*⁷

This approach sits entirely at odds with the comments of the Panel of the WTO Dispute Settlement Body in *Australia – Anti-Dumping Measures on A4 Copy Paper*,⁸ which stressed the importance of identifying differences between an exporter’s domestic and export prices, which may be such that do not permit a proper comparison between the two:

In our view, how domestic prices and export prices of an individual exporter... are affected notwithstanding an equal decrease in input costs is likely to depend significantly upon a number of factors, including the prevailing conditions of competition in each market and the existing relationship between price and cost. We consider that an exporter may find itself with different options in respect of how to take advantage of an input cost decrease depending on market conditions in each market. This is similar to a situation when a cost increase occurs and the exporter faces differing market conditions in domestic and export markets such that the exporter is able to pass on the cost increase to customers in one market but unable to do so in the other. Accordingly, we are not persuaded that a low-priced input used identically to produce merchandise for domestic and export markets will necessarily have the same effect on domestic prices and export prices and

⁴ Appellate Body Report, *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*, WT/DS282/AB/R, adopted 2 November 2005 (**US – Anti-Dumping Measures on Oil Country Tubular Goods**)

⁵ *US – Anti-Dumping Measures on Oil Country Tubular Goods* at [166].

⁶ SEF 546, p. 28.

⁷ SEF 546, p. 40.

⁸ Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper from Indonesia*, WT/DS529/R, adopted 4 December 2019.

*therefore necessarily permit a proper comparison. Rather, we find that whether the exporter's domestic sales permit a proper price comparison with the export price is a question that can only be ascertained through an examination of relevant factual circumstances.*⁹

Given that the basic premise of dumping is the identification of *...a situation of international price discrimination...*¹⁰ it would appear counterintuitive for the Commission to seek to extrapolate changes in the price of sales into the export market as indicative, or relevant, to likely changes to the price of sales into the exporter's domestic market.

The better view is for the Commission to take available, published price surveys of domestic Korean rebar prices as the basis to adjust any relevant, but historic, normal value information for the exporter. Such information was provided by InfraBuild in its original application relating to this inquiry in support of the industry member's estimate of normal values and changes across the life-cycle of the measures.¹¹

A comparison of the average monthly published prices for rebar sold into the Korean domestic market during the review period for *Review No. 489* (1 July 2017 to 30 June 2018)¹² to the average monthly published Korean domestic rebar prices for the 'inquiry period' (1 January to 31 December 2019).¹³ The change across the two periods was a **6.2 per cent increase** in Korean domestic rebar prices.

In contrast, the effect of the differences in the prevailing conditions of competition in each market and the existing relationship between price and cost were pronounced during these two reference periods – weighted average export prices to Australia declined by 1.1 per cent and (KRW denominated) scrap prices decreased by 6.9 per cent.¹⁴ As such, the evidence supports the conclusion that movements in export prices and costs are not comparable, indicative or relevant to movements in domestic prices between the two reference periods, and as such form no lawful or reasonable basis for adjustment.

Therefore, the correct or preferable decision would be for the Commission to adjust the normal value ascertained in *Review Nos. 486/489* with the published survey Korean domestic rebar price information previously supplied to the Commission by InfraBuild. The fact that the ascertained export price information is 'verified' does not justify its use by the Commission for the purpose of making the adjustment when it is by any measure, irrelevant information for the purpose of ascertaining the normal value. The comments of the Dispute Settlement Body cited above, put this contention beyond doubt. Furthermore, the Commission should not lose sight of why it is unable to ascertain the Korean exporter'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*

⁹ *Australia – Anti-Dumping Measures on A4 Copy Paper* at [7.80].

¹⁰ https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm (accessed on 1 September 2020).

¹¹ EPR Folio No. 546/001 at CONFIDENTIAL ATTACHMENT 1.1.

¹² Domestic sales values for the period 1 June 2017 to 31 May 2018 have been taken in order to permit a proper comparison to the prices for goods exported during that period, but not entered for home consumption, generally, a month later (i.e. corresponding with the review period, 1 July 2017 to 30 June 2018).

¹³ Domestic sales values for the period 1 December 2018 to 30 November 2019 have been taken in order to permit a proper comparison to the prices for goods exported during that period, but not entered for home consumption, generally, a month later (i.e. corresponding with the 'inquiry period', 1 January to 31 December 2019).

¹⁴ CONFIDENTIAL ATTACHMENT A.

- *the completeness, relevance and accuracy of Daehan's CTMS in respect of the goods and like goods.*¹⁵

Given that the Korean exporter was, reportedly, able to previously satisfy the Commission of these matters in *Review Nos. 486/489*, this is not an interested party who is unaware or incapable of operating within the parameters of the Commission's financial information verification standards.

6.4.1.2 [NatSteel] Normal value

In its *Exporter Verification Report* for NatSteel,¹⁶ the Commission indicated that:

*During the inquiry period, the like goods sold domestically by NatSteel were either manufactured in its production facilities or imported. The verification team has found that NatSteel's accounting system does not distinguish between manufactured and imported products at the time goods are recorded as inventory or at the point of sale. NatSteel also demonstrated that imported products for domestic sale are produced to meet the same standards and physical specifications as the goods that it manufactures.*¹⁷

The verification team then concludes ... *that the goods (whether manufactured by NatSteel or imported) sold for domestic consumption are identical to, or have characteristics closely resembling, the goods exported to Australia...*¹⁸ without seeking to clarify whether domestic sales of imported rebar were ultimately excluded from the Commission's OCOT consideration and ascertainment of the normal value for NatSteel under subsection 269TAC(1).

The idea that sales of imported goods by the exporter in their domestic market may be used for the purpose of determining the normal value of the goods exported is unknown in our domestic law and WTO jurisprudence. To clarify, subsection 269TAC(1) provides in relevant part that *...the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export.* In turn, subsection 269TAAD(1) provides in relevant part *...that like goods are sold in the country of export in sales... at a price that is less than the cost of such goods... the price paid for the goods... is taken not to have been paid in the ordinary course of trade.* In turn, subsection (4) provides that:

The cost of goods is worked out by adding:

- the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and*
- the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.*

There is nothing in the legislation that permits anything other than like goods 'produced or manufactured' ...in the country of export, from constituting *...like goods sold in the ordinary course of trade...* .

¹⁵ SEF 546, p. 38.

¹⁶ EPR Folio No. 546/012.

¹⁷ EPR Folio No. 546/012, p. 5.

¹⁸ EPR Folio No. 546/012, pp. 5 and 6.

Therefore, to the extent that the Commission has calculated a normal value for NatSteel that includes its domestic sales of imported 'like goods', then it is not capable of constituting the correct or preferable decision.

Even if, domestic sales of imported 'like goods' are not included in the Commission's determination of the normal value for NatSteel, then we retain serious concerns surrounding the Commission's assessment of sales in the ordinary course of trade (**OCOT**), outlined below:

- were the *costs* of imported goods included in the calculation of the "costs of goods" determined by the Commission under subsection (3)?
- when calculating whether the sales of goods at a price that was less than the cost of such goods had *...occurred in substantial quantities during an extended period...* under subsection (2), were sales of imported goods included in that calculation?
- were the purchase volumes of imported goods included in the calculation of the unit cost to make the goods under paragraph (a) of subsection (4)?
- were the sales volumes of imported goods included in the calculation of the unit cost to sell the goods under paragraph (b) of subsection (4)?

Moreover, given that NatSteel's accounting system does not distinguish between manufactured and imported products at the time goods are recorded as inventory or at the point of sale, InfraBuild remains concerned that sales of imported goods were included in an assessment of whether or not domestic sales were made in low volumes (5% of export volumes to Australia) under subparagraph 269TAC(2)(a)(i).

Indeed, in the original *Dumping Investigation No.264*, NatSteel also purchased imported rebar for a period and the Commission stated they were unable to determine the cost of goods:

*Sales may also not be in the ordinary course of trade for other reasons. As set out in section 3.2.3, it was explained to the Commission that during the period of investigation, NatSteel imported rebar to satisfy the domestic market while it was upgrading its furnace and rolling mill. It was also explained that NatSteel's accounting system assigned identical codes to imported rebar and rebar that was manufactured by NatSteel. As a result, **the Commission was unable to determine the cost of goods, that is the cost of production or manufacture of domestic sales**, pursuant to Regulation 43(2) of the Customs (International Obligations) Regulation 2015 (Customs Regulation).¹⁹ [emphasis added]*

The Commission concluded in the original investigation that with respect to the calculation of the normal value:

*Based on the information provided by NatSteel and the verification processes conducted on site, we could not be satisfied that domestic sales were sold in the ordinary course of trade, as discussed in section 8.6 above. As a result, **we consider that prices paid in respect of domestic sales are not suitable for assessing normal value under s. 269TAC(1)**. A summary of domestic sales is at **confidential appendix 3**.²⁰ [emphasis added]*

In that investigation, the normal value for NatSteel was constructed by the Commission under paragraph 269TAC(2)(c):

¹⁹ EPR Folio No. 264/069, p. 27.

²⁰ EPR Folio No. 264/069, p. 27 at [8.8].

We consider that information gathered and detailed in this report and its attachments can be relied upon to establish constructed normal values for comparison with export prices for rebar exported to Australia during the investigation period under s. 269TAC(2)(c).²¹

6.4.1.3 [NatSteel] Adjustments

Specification adjustment

The Commission advises that it made a specification adjustment to that price to ensure fair comparison between the price of the export model and the price of the surrogate domestic model. In the *Exporter Verification Report* the verification team confirmed that the normal value for a model (MCC: P-C-S-B-1-N) was determined using a model sold domestically (MCC: P-C-S-B-2-N) with a specification adjustment being made under subsection 269TAC(8).

Firstly, assuming that the surrogate domestic model (MCC: P-C-S-B-2-N) was in fact produced by the exporter; and not imported; InfraBuild does not oppose its selection for the purposes of comparison. What remains unclear to InfraBuild is the method of calculating the amount of the specification adjustment to be applied – it is observed that the reported, “Non-Confidential Attachment 3” to the *Exporter Verification Report* is not available.²² **Table 1** (below) presents a matrix of the reported MCCs for NatSteel’s export and domestic sales.

²¹ EPR Folio No. 264/069, p.30.

²² SEF 546, p. 42.

Export Models - NatSteel

		Prime/Non-Prime		Min Yield Strength (Mpa)				Finished Form		Nominal Diameter (mm)				Length				Deformation Pattern	
		Prime	Non-Prime	<=300	>300 to 480	>480 to <550	>=550	Straight	Coils	<12	12 to 16	>16 to 32	>32 to 50	<=6m	>6 to 12m	>12m	Coil	Threaded	Non-Threaded
1	P-C-C-A-C-N	X				X			X	X							X		X
2	P-C-C-B-C-N	X				X			X		X						X		X
3	P-C-S-B-1-N	X				X		X		X			X						X
4	P-C-S-B-2-N	X				X		X		X				X					X
5	P-C-S-C-2-N	X				X		X			X			X					X
6	P-C-S-D-2-N	X				X		X				X		X					X

Domestic Models - NatSteel

		Prime/Non-Prime		Min Yield Strength (Mpa)				Finished Form		Nominal Diameter (mm)				Length				Deformation Pattern	
		Prime	Non-Prime	<=300	>300 to 480	>480 to <550	>=550	Straight	Coils	<12	12 to 16	>16 to 32	>32 to 50	<=6m	>6 to 12m	>12m	Coil	Threaded	Non-Threaded
1	P-B-C-A-C-N	X			X				X	X							X		X
2	P-B-C-B-C-N	X			X				X		X						X		X
3	P-C-C-A-C-N	X				X			X	X							X		X
4	P-C-C-B-C-N	X				X			X		X						X		X
5	P-C-S-A-1-N	X				X		X		X			X						X
6	P-C-S-A-2-N	X				X		X		X				X					X
7	P-C-S-B-2-N	X				X		X		X				X					X
8	P-C-S-C-2-N	X				X		X			X			X					X
9	P-C-S-C-3-N	X				X		X			X				X				X
10	P-C-S-D-2-N	X				X		X				X		X					X
11	P-C-S-D-3-N	X				X		X				X			X				X
12	P-D-S-B-2-N	X					X	X		X				X					X
13	P-D-S-C-2-N	X					X	X			X			X					X
14	P-D-S-C-3-N	X					X	X			X				X				X
15	P-D-S-C-3-N	X					X	X	X			X		X					X
16	P-D-S-D-3-N	X					X	X				X			X				X

TABLE 1: Matrix of MCCs sold by NatSteel

Table 1 (above) indicates that the surrogate domestic model (MCC: P-C-S-B-2-N) differs from the export model in terms of length alone (≤ 12 metres *versus* ≤ 6 metres). The next closest domestic model is (MCC: P-C-S-A-2-N), which is all but identical except for nominal diameter. InfraBuild proposes that as domestic law requires that adjustments under subsection 269TAC(8) be made on the basis of price comparability, that any difference (premium or discount) applied to the surrogate model be based on the difference in the domestic prices between models P-C-S-A-2-N and P-C-S-A-1-N. As the only physical difference between these two models is length (≤ 12 metres *versus* ≤ 6 metres), then the Commission should be able to assess whether this physical difference alone has any any discernible effect on price.

Domestic credit terms and domestic factoring costs

InfraBuild observes that downward adjustments were made to the normal value under subsection 269TAC(8) for both “domestic credit terms” and “domestic factoring costs”. Unless mistaken, the existence of a factoring arrangement suggests that domestic sales are paid by the ‘factor’ on terms less than the domestic payment terms endorsed on the sales invoice. Therefore, we fail to see how both an adjustment for domestic credit terms and factoring costs may be made when domestic invoice values are paid on or near cash terms, albeit at a discount (i.e. the factoring costs).

6.6.1.2 [Taiwanese exporters] Normal value

At the outset it is important to observe that the Commission has been unable to verify the normal value for the Taiwanese exporters on the basis of non-cooperation in this inquiry. Again, the primary Taiwanese exporter the subject of these measures, Wei Chih, is entirely familiar with the Commission's verification practices and processes, having cooperated in the recently concluded review of the subject measures (*Review No. 489*).

Without the cooperation of the Taiwanese exporters the subject of this inquiry, the Commission has sought to ascertain the normal value under subsection 269TAC(6) *...for the inquiry period based on the normal value of all other exporters determined in ADRP Report 108 and has made an adjustment with reference to what it considers to be the most reliable information at hand, namely the movement in the ascertained export price for 'all other exporters' from Taiwan in the Review 489 period (which relied on the verified export price of Wei Chih) and the ascertained export price for the current inquiry period (from the ABF import database).*²³

Again, InfraBuild refers to its comments and observations concerning the similar approach applied to determining the normal value for the Korean exporter, Daehan, above (refer Section 6.3.1.2). In summary, the same conclusion must be drawn that, in light of the comments of the Panel of the WTO Dispute Settlement Body in *Australia – Anti-Dumping Measures on A4 Copy Paper*, the proposed approach would not support the correct or preferable decision being made by the Minister as there is no evidence to support the conclusion that changes in the price of sales into the export market area comparable, indicative, or indeed, relevant, to changes to the price of sales into the exporter's domestic market.

The better view is for the Commission to take available, published price surveys of domestic Taiwanese rebar prices as the basis to adjust any relevant, but historic, normal value information for the exporters. Such information was provided by InfraBuild in its original application relating to this inquiry in support of the industry member's estimate of normal values and changes across the life-cycle of the measures.²⁴

A comparison is provided of the average monthly published prices for rebar sold into the Taiwanese domestic market during the review period for *Review No. 489* (1 July 2017 to 30 June 2018)²⁵ to the average monthly published Taiwanese domestic rebar prices for the 'inquiry period' (1 January to 31 December 2019).²⁶ The change across the two periods was a **0.6 per cent decrease** in Taiwanese domestic rebar prices.

In contrast, the effect of the differences in the prevailing conditions of competition in each market and the existing relationship between price and cost were pronounced during these two reference periods – weighted average export prices to Australia increased by 0.2 per cent and (TWD denominated) scrap prices decreased by 17.7 per cent.²⁷ As such, the evidence supports the conclusion that movements in export prices and costs are not comparable, indicative or relevant to movements in domestic prices between the two reference periods, and as such form no lawful or reasonable basis for adjustment.

²³ SEF 546, p. 45.

²⁴ EPR Folio No. 546/001 at CONFIDENTIAL ATTACHMENT 1.2.

²⁵ Domestic sales values for the period 1 June 2017 to 31 May 2018 have been taken in order to permit a proper comparison to the prices for goods exported during that period, but not entered for home consumption, generally, a month later (i.e. corresponding with the review period, 1 July 2017 to 30 June 2018).

²⁶ Domestic sales values for the period 1 December 2018 to 30 November 2019 have been taken in order to permit a proper comparison to the prices for goods exported during that period, but not entered for home consumption, generally, a month later (i.e. corresponding with the 'inquiry period', 1 January to 31 December 2019).

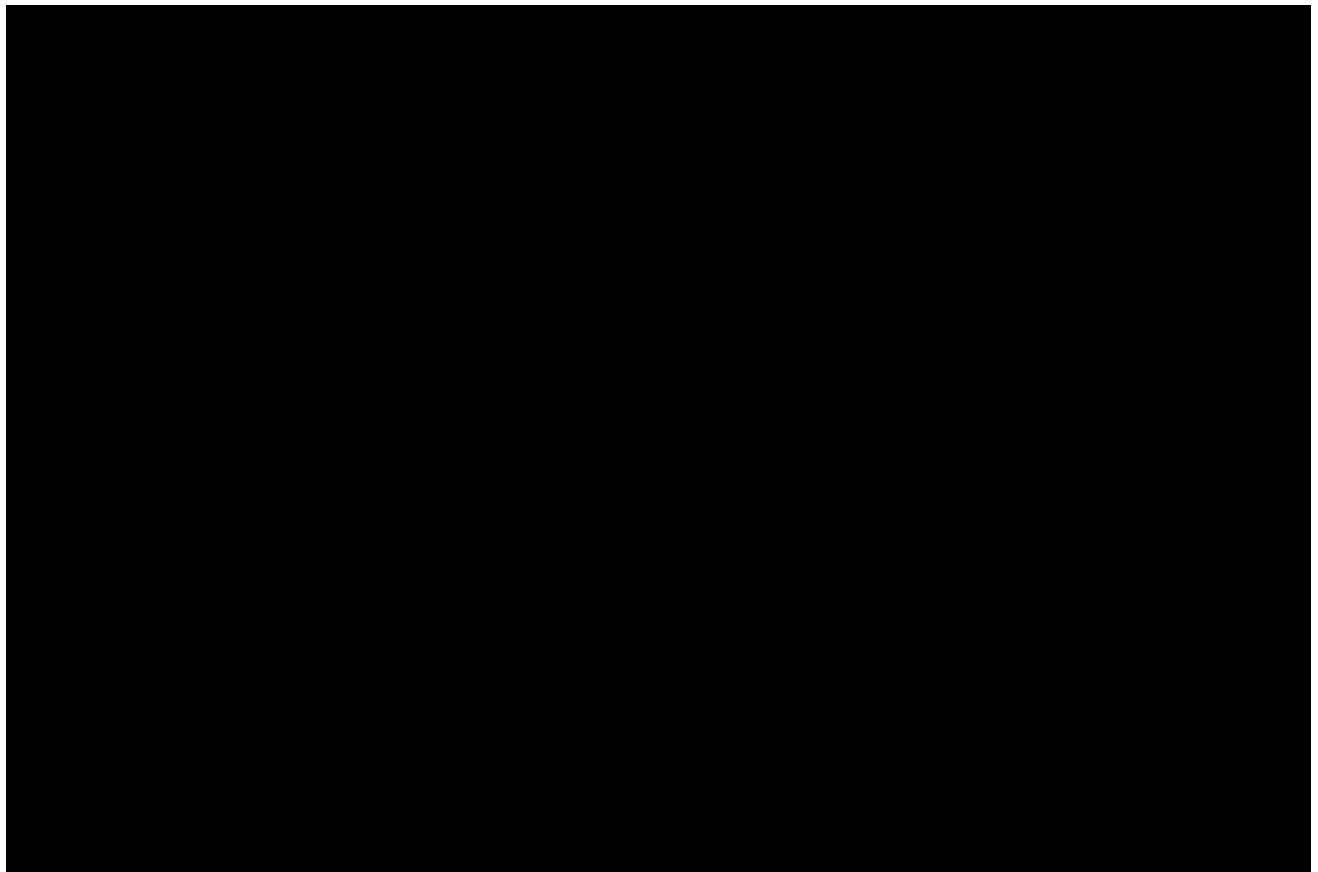
²⁷ CONFIDENTIAL ATTACHMENT A.

Therefore, the correct or preferable decision would be for the Commission to adjust the normal value ascertained in *Review Nos. 486/489* with the published survey Taiwanese domestic rebar price information previously supplied to the Commission by InfraBuild. The fact that the ascertained export price information is ‘verified’ does not justify its use by the Commission for the purpose of making the adjustment when it is by any measure, irrelevant information for the purpose ascertaining the normal value. The comments of the Dispute Settlement Body cited above, put this contention beyond doubt.

7.4.2.4 Taiwan [Export volumes and the impact of measures]

The Commission has incorrectly asserted that *...volumes from Taiwanese exporters subject to these measures following the inquiry period remains minimal.*²⁸ As **Confidential Chart 2** (below) indicates, Taiwanese exporters continue to export monthly volumes following the ‘inquiry period’ that are comparable to volumes exported during the ‘inquiry period’.

[The following graphic is considered confidential in its entirety as it contains rights restricted subscription based data]



Confidential Chart 2: Rebar imports to Australia from Taiwan since 1 January 2019 (Source: CONFIDENTIAL ATTACHMENT A)

Indeed, the estimated volume of imports from Taiwan within the first six months of the end of the ‘inquiry period’ accounts for over 88 per cent of the volumes imported across the entire ‘inquiry period’. Even if the majority of this volume is from sources other than those exporters the subject of the measures of this inquiry, the ongoing and significant volumes of rebar exported from Taiwan indicates that the market for

²⁸ SEF 546, p. 50.

rebar exported to Australia remains attractive to Taiwanese exporters of rebar to Australia, irrespective of their identity.

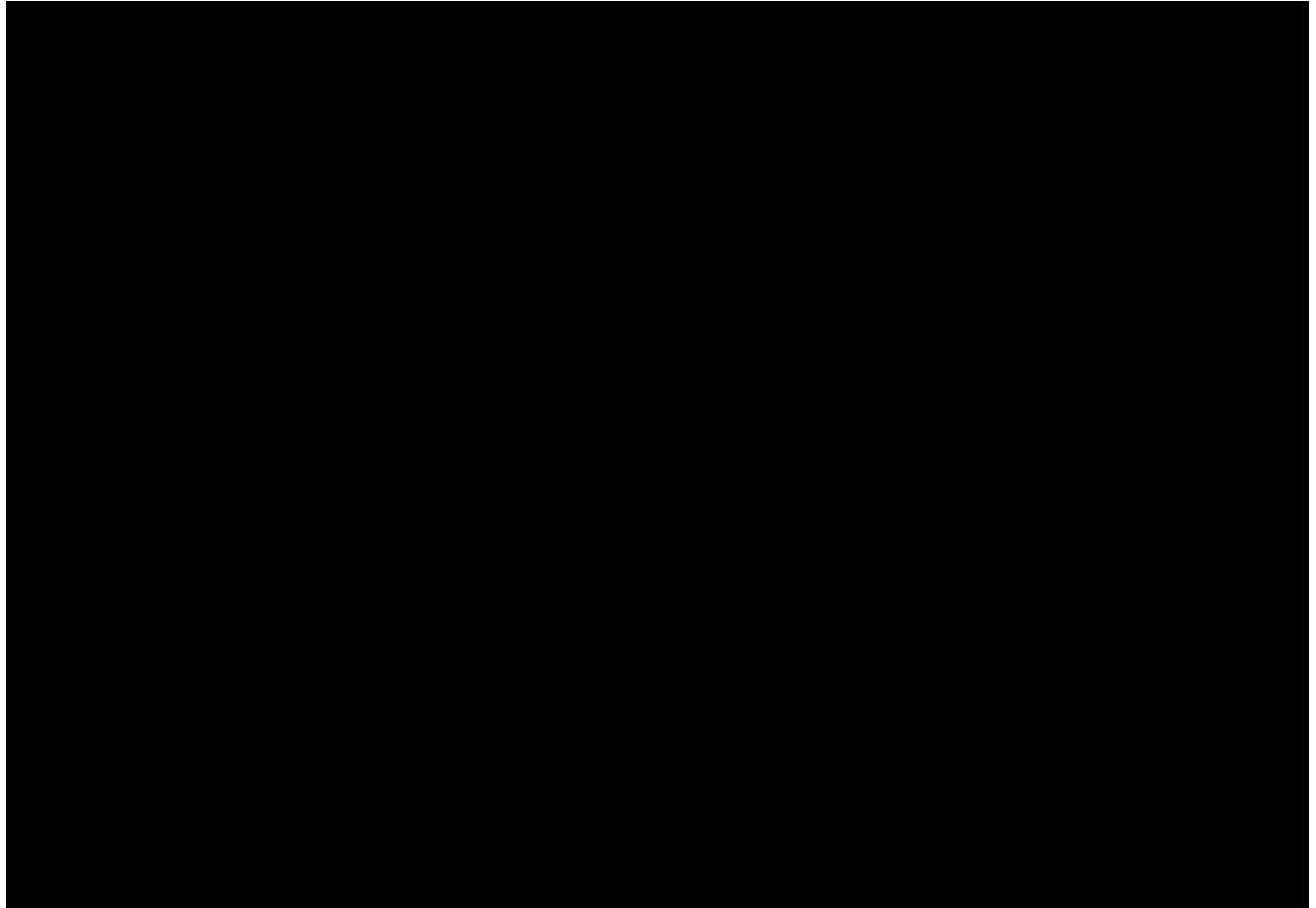
7.4.3 Export price and impact of measures

InfraBuild refers to the recently initiated *Review of Measures No. 566* concerning the measures the subject of this inquiry (**REV 566**). REV 566 has a review period extending six months beyond the end of the ‘inquiry period’, specifically, InfraBuild seeks to bring to the Commission’s attention additional export activity between 1 January and 30 June 2020. This additional export activity is relevant to the Commission’s consideration of whether the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent. Being entirely factual and reliable (capable of ABF validation) evidence, the additional six months of export activity gives the Commission, an opportunity to examine the exporters’ trading behaviour during a period they would likely not have anticipated would form part of the ‘inquiry period’ but nonetheless relevant to the prospective considerations for a continuation inquiry. Just as export volumes for Taiwanese exporters (above) reveals a return to trading activity designed to “circumvent” the continuation inquiry process, the charts below indicate that all other exporters the subject of these measures resumed and/or increased rebar exports to Australia, at lower values following the end of the ‘inquiry period’.

Korea

Confidential Chart 3 (below) indicates that since the end of the ‘inquiry period’, weighted average FOB export (KRW denominated) price of rebar exported from Korea **decreased by 7.6 per cent** when compared to the ‘inquiry period’. Further, since the end of the ‘inquiry period’, exporters of rebar have exported **28.3 per cent** of the volume traded during the ‘inquiry period’.

[The following graphic is considered confidential in its entirety as it contains rights restricted subscription based data]

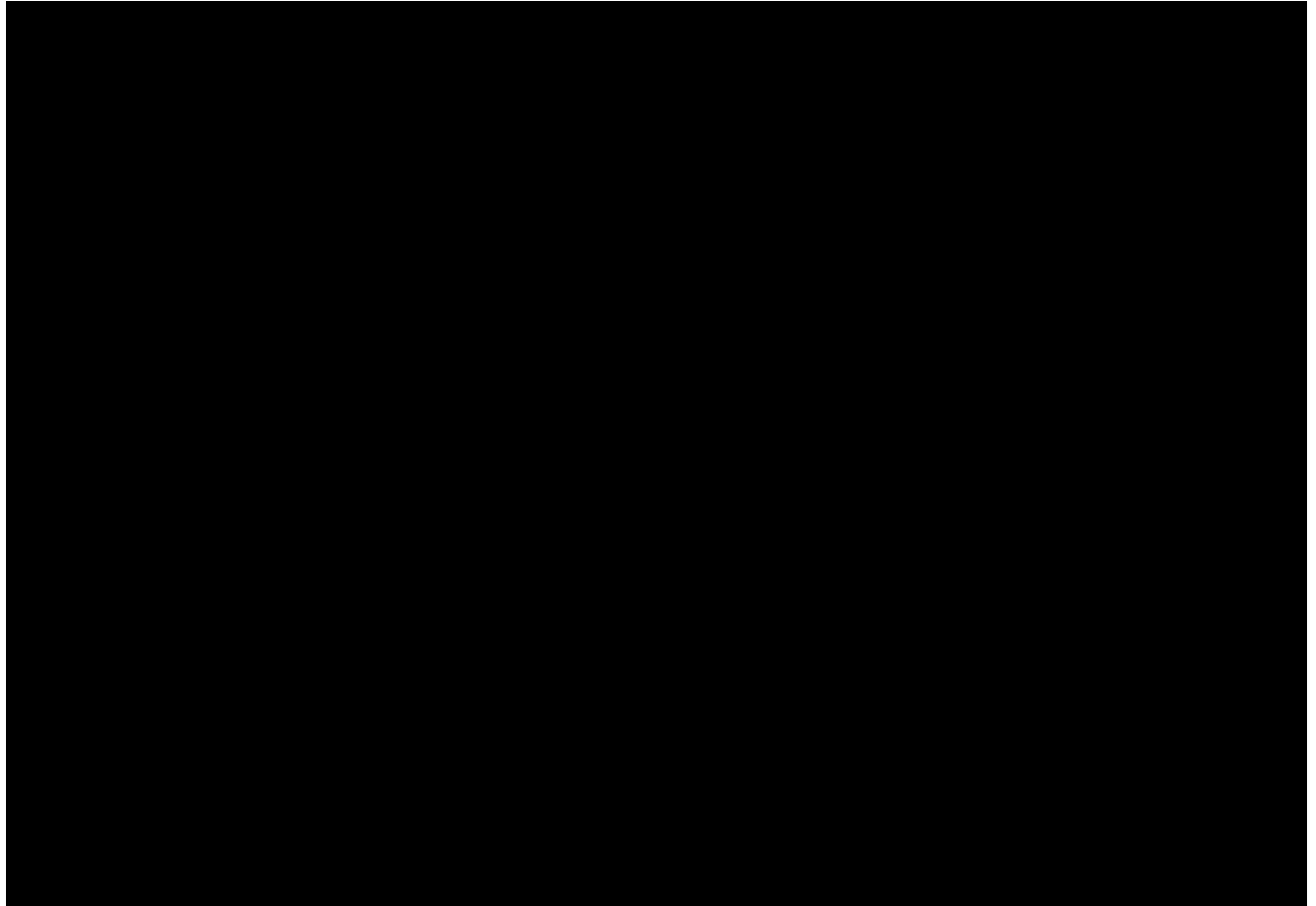


Confidential Chart 3: Volume (t) and price (KRW/t) of rebar exported to Australia from Korea (Source: CONFIDENTIAL ATTACHMENT A)

Taiwan

Confidential Chart 4 (below) indicates that since the end of the 'inquiry period', weighted average FOB export (NTD denominated) price of rebar exported from Taiwan **decreased by 34.8 per cent** when compared to the 'inquiry period'. Further, since the end of the 'inquiry period', exporters of rebar have exported **88.3 per cent** of the volume traded during the 'inquiry period'.

[The following graphic is considered confidential in its entirety as it contains rights restricted subscription based data]

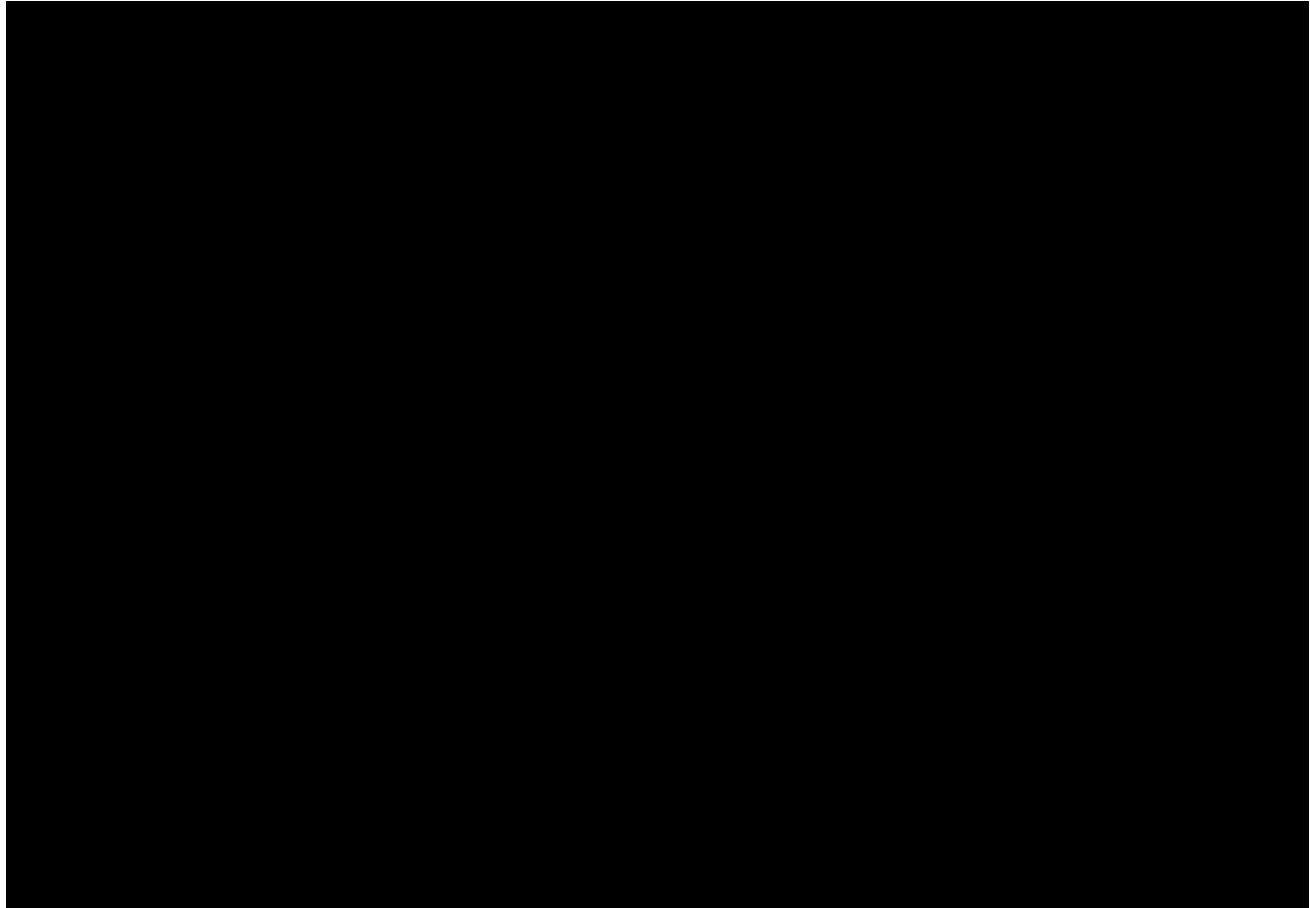


Confidential Chart 4: Volume (t) and price (NTD/t) of rebar exported to Australia from Taiwan (Source: CONFIDENTIAL ATTACHMENT A)

Singapore

Confidential Chart 5 (below) indicates that since the end of the 'inquiry period', weighted average FOB export (SGD denominated) price of rebar exported from Singapore **decreased by 9.9 per cent** when compared to the 'inquiry period'. Further, since the end of the 'inquiry period', exporters of rebar have exported **49.1 per cent** of the volume traded during the 'inquiry period'.

[The following graphic is considered confidential in its entirety as it contains rights restricted subscription based data]

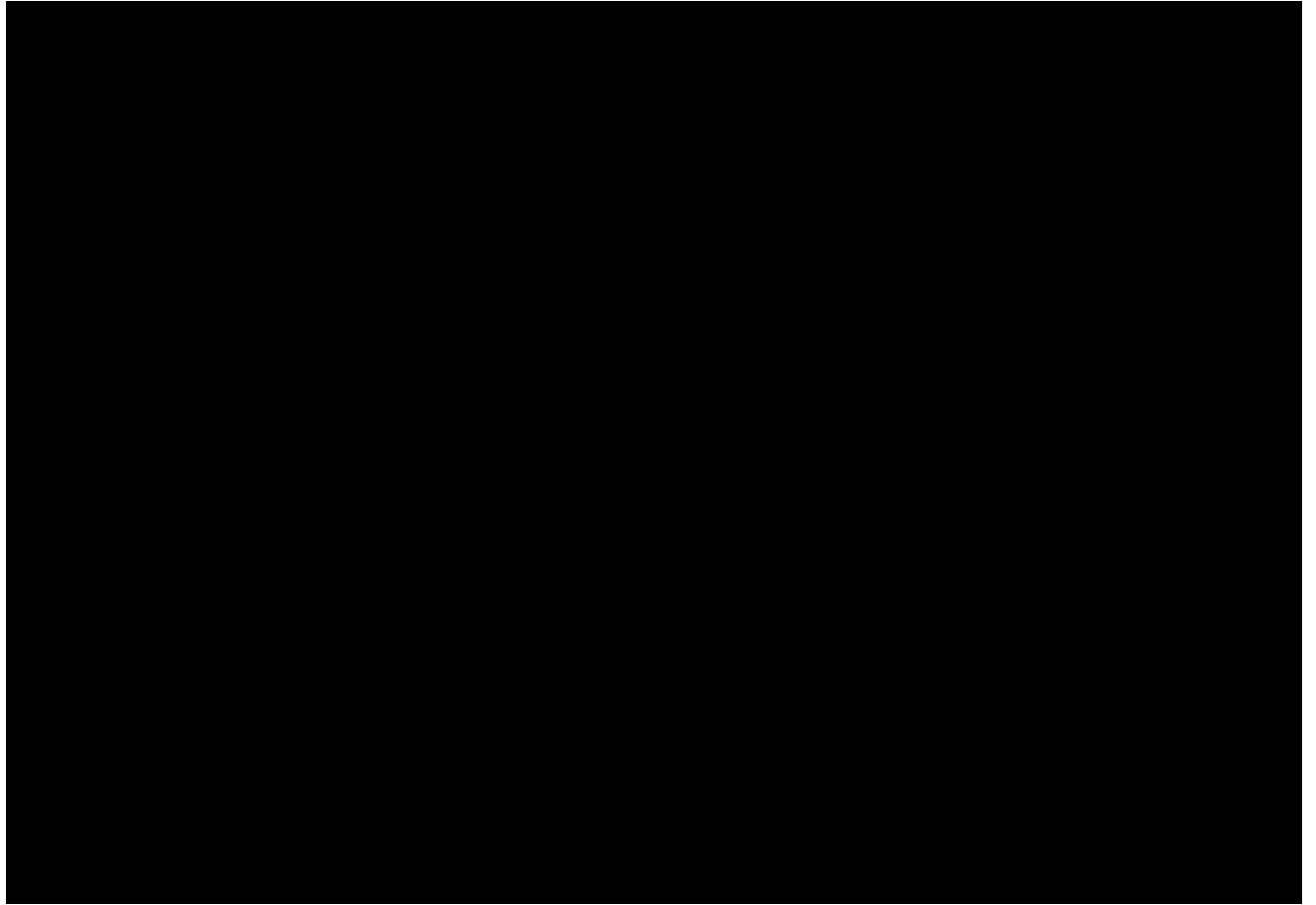


Confidential Chart 5: Volume (t) and price (SGD/t) of rebar exported to Australia from Singapore (Source: CONFIDENTIAL ATTACHMENT A)

Spain

Confidential Chart 6 (below) indicates that since the end of the 'inquiry period', weighted average FOB export (EUR denominated) price of rebar exported from Spain **decreased by 15.3 per cent** when compared to the 'inquiry period'. Further, since the end of the 'inquiry period', exporters of rebar have exported **115 per cent** of the volume traded during the 'inquiry period'.

[The following graphic is considered confidential in its entirety as it contains rights restricted subscription based data]



Confidential Chart 6: Volume (t) and price (EUR/t) of rebar exported to Australia from Spain (Source: CONFIDENTIAL ATTACHMENT A)

Furthermore, a summary of quarterly export price information during the review period for REV 566 (TABLE 2, below), indicates that the Commission’s conclusions regarding the source of the lowest priced rebar exports no longer applies in the period following the ‘inquiry period’, especially for exports from Taiwan who was responsible for the lowest (AUD/t) export prices for three of the four quarters during the review period, and in particular in both quarters following the end of the ‘inquiry period’.

Source	Jul - Sep 2019	Oct - Dec 2019	Jan - Mar 2020	Apr - Jun 2020
Singapore	██████████	██████████	██████████	██████████
South Korea	██████████	██████████	██████████	██████████
Spain	██████████	██████████	██████████	██████████
Taiwan	██████████	██████████	██████████	██████████

TABLE 2: Quarterly export price since 1 July 2019 (Source: CONFIDENTIAL ATTACHMENT A)

Table 2 also indicates that the quarterly price premium between rebar exports from Singapore and Korea eroded, and by the June 2020 quarter was only ██████ per cent. This suggests that in the absence of measures altogether (including the 3 per cent *ad valorem rate*), the Singaporean exporter has indicated its propensity to export at dumped prices to regain market share via its sole importer and fabricator. Assuming that the Commission’s current dumping margin calculation is correct (which is disputed above), then given the 9.9 per cent decline in the Singaporean exporter’s FOB export price to Australia in the period following the end of

the ‘inquiry period’, then a simple proportional algebraic calculation suggests that the exporter’s dumping margin for rebar exported since 1 January 2020 **has now increased from 0.6 per cent to 5.4 per cent**.²⁹ Both the erosion of the Singaporean exporter’s Australian market price “premium” and extrapolated dumping margin following the ‘inquiry period’, does not support the Commission’s preliminary finding that the Singaporean exporter will not recommence exporting the goods at dumped prices should the measures be permitted to expire.

Similarly, the **reduction in the Taiwanese exporters’ export price by 34.8 per cent** in the period following the end of the ‘inquiry period’ generates a significantly *non-de minimis* dumping margin. Therefore, the Commission’s observation that *...Taiwanese prices lowered in 2018, however have increased in 2019...*³⁰ does not hold in 2020.

7.4.7.2 Singapore [Price undercutting]

InfraBuild does not consider the Commission’s approach to assessing price undercutting by NatSteel as the correct or preferable method. The Commission knows that InfraBuild sells to NatSteel’s Australian customer on a FIS basis. That price has been verified. The Commission did not verify InfraBuild’s prices at an EXW level. The Commission also knows that InfraBuild’s post-EXW expenses are based on [REDACTED] [nature of expenses]. Similarly, the Commission has verified NatSteel’s importer’s FOB export price and post-exportation expenses up to the point of delivery to their Australian works. Therefore, attempting to compare *...the Australian industry’s selling prices to Best Bar during the inquiry period at ex-works (EXW) delivery terms to the cost incurred by Best Bar to import the goods from Singapore (comprising the exporter’s FOB export price and other post exportation costs, excluding delivery costs but including dumping duty)*...³¹ is not the correct or preferable approach. The most accurate, reliable and verified point of comparison is at the FIS price level, attempting to compare price at a “deduced” Australian industry EXW price is not reliable.

The comparison of prices at an EXW level departs from the undercutting analysis conducted by the Commission in INV 264 with a comparison of prices at an EXW level being rejected by the Commission³².

The Panel in *US – Oil Country Tubular Goods Sunset Reviews* was of the view that, to the extent that an investigating authority relies on a determination of injury when conducting a sunset review, the obligations of Article 3 would apply to that determination:

*If, however, an investigating authority decides to conduct an injury determination in a sunset review, or if it uses a past injury determination as part of its sunset determination, it is under the obligation to make sure that its injury determination or the past injury determination it is using conforms to the relevant provisions of Article 3. For instance, **Article 11.3 does not mention whether an investigating authority is required to calculate the price effect of future dumped imports on the prices of the domestic industry. In our view, this means that an investigating authority is not necessarily required to carry out that calculation in a sunset review.***

²⁹ If a base export price of 100 units generates a dumping margin of 0.6 per cent, then assuming no change in normal value, but 9.9 per cent decline in export price (90.1 units), generates a dumping margin of 5.4 per cent.

³⁰ SEF 546, p. 51.

³¹ SEF 546, p. 54.

³² REP 264, pp. 78-82.

*However, if the investigating authority decides to do such a calculation, then it would be bound by the relevant provisions of Article 3 of the Agreement. Similarly, if, in its sunset injury determinations, an investigating authority uses a price effect calculation made in the original investigation or in the intervening reviews, it has to assure the consistency of that calculation with the existing provisions of Article 3.*³³ [emphasis added]

Furthermore, given the Commission has observed ...*that duty assessments conducted in respect of NatSteel's exports after the imposition of measures have determined margins of a comparable degree, and in some cases, negative margins and a full refund of the IDD paid...*³⁴ it is unclear whether the Commission has included an amount for *interim* or *final* dumping duty paid. Any inclusion of dumping duty in the FIS value of the goods should be an amount only of *final* dumping duty paid.

Moreover, given that during the 'inquiry period' InfraBuild applied an IPP based pricing methodology, it is not clear what the relevance or consequence of the following observation by the Commission is:

*Commission did not find that exports from Singapore undercut the Australian industry's selling prices during the inquiry period*³⁵

The comparison of sales price values is based on actual sales achieved. When the exports from Singapore *undercut* the Australian industry's 'offer price', then given the commodity nature of rebar, and that price is primary determinant of outcome, then InfraBuild's sales record will not register a sale or value, because it constitutes a lost value, whereas the Singaporean exporter will register a sale. Similarly, when InfraBuild's sales price *undercuts* the Singaporean exporter's 'offer price', then it will register a sale and undercutting value, whereas the Singaporean exporter will not. In an IPP based pricing environment, analysis of undercutting margins is of limited value, if based on sales value, as the lowest price will typically register the sale, and the unsuccessful 'price offer' will not be recorded. Any analysis of price undercutting is only meaningful in the context of unsuccessful sales by the Australian industry or exporter. InfraBuild has presented the Commission with its price offers to the Singaporean exporter's customer, the necessary analysis for the Commission is to what extent were unsuccessful *price offers* by the Australian industry undercut by the Singaporean exporter's successful export sales?

However, of greatest concern is the Commission's statement that:

*The Commission found that the costs incurred by the importer to import the goods from Singapore was greater than the Australian industry's selling prices, with the percentage variance found to be material.*³⁶

This statement strongly suggests that the export price appears to be influenced by a commercial or other relationship between the importer, or an associate of the importer, and the exporter, or an associate of the exporter, and as such ought not to be treated as an arms length transaction under subsection 269TAA(1). Alternatively, the Commission's statement suggests that the goods were sold in Australia (whether in the condition in which they were imported or otherwise) at a loss under subsection 269TAA(2), and as such

³³ Panel Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/R and Corr.1, 16 July 2004 at [7.274 – 7.2.75].

³⁴ SEF 546, p. 62.

³⁵ SEF 546, p. 54.

³⁶ SEF 546, p. 54.

should be treated for the purposes of the purposes of paragraph 269TAA(1)(c), as goods sold at a loss and 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. Indeed, until recently the Singaporean exporter and Australian importer have been associates of each other under paragraph 269T(4)(b), specifically, the common shareholder to both entities of Rokeby Nominees Pty Ltd.³⁷

7.4.8 InfraBuild's pricing structure

The Commission again observes that *...the assessment of price undercutting at section 7.4.7 shows minimal price undercutting.*³⁸ However, InfraBuild repeats its comments to the observation made above that you would not expect to see price undercutting where the domestic industry's pricing mechanism is influenced by IPP. The absence of price undercutting is not evidence of an absence of injury or causation, but in fact the opposite, it is evidence of the domestic industry's reaction to IPP, that is price depression that has successfully secured a sale of the goods. Furthermore, it is unclear from the Commission's explanation of its price undercutting analysis, whether it assessed *prices* at the specific customer level the subject of the specific importer's comparable *price offer*. To perform any price undercutting analysis at the whole of enterprise or even MCC model level is meaningless, as the Commission acknowledges that InfraBuild's price offers are at the customer specific level *...whereby it either references monthly import price offers presented by customers or in the case of sales to related parties.*³⁹

Indeed, the Commission, tacitly acknowledges the limitation of any price undercutting analysis within a IPP based pricing model:

*As InfraBuild reduces its prices in line with import offers, the comparison of InfraBuild's final prices and import prices will not show the full extent of price undercutting.*⁴⁰

7.4.10 Production displacement resulting in increased volumes to Australia

The Commission observes that:

*It is further noted that the OECD report cited by InfraBuild points to a deceleration of global steelmaking capacity and suggests that the current capacity building projects that are in their planning stage would need to be realised for a sustained increase in capacity.*⁴¹

Since the original application, the impacts of the COVID-19 pandemic have become known. By way of update, according to the Organisation for Economic Co-operation and Development (**OECD**), steel market conditions have turned negative in 2020 and are facing contraction in the short and the medium term. Weakening economic conditions, increasing global trade restrictions, new capacity investments, the persistence of excess capacity all pose downside risks, and the evolving impact from the COVID-19 pandemic are all likely to have an impact on the steel industry.⁴² According to the World Steel Association (**WorldSteel**), global steel growth rates in 2019 and 2020 are expected to slow down with a slowing global economy.

³⁷ NON-CONFIDENTIAL ATTACHMENT B, p. 8, CONFIDENTIAL ATTACHMENT C and CONFIDENTIAL ATTACHMENT D.

³⁸ SEF 546, p. 55.

³⁹ SEF 546, p. 54.

⁴⁰ SEF 546, p. 55.

⁴¹ SEF 546, p. 56.

⁴² <https://www.oecd.org/sti/ind/steel-market-developments-Q2-2020.pdf> at p. 6 (accessed on 30 May 2020)

Uncertainties over the trade environment and volatility in the financial markets could pose downside risks to this forecast.⁴³

In its Short Range Outlook (**SRO**) for 2020 and 2021, WorldSteel forecasts that steel demand will contract by 6.4% in 2020, dropping to 1,654 million MT (**metric tonnes**) due to the COVID-19 crisis. In 2021 steel demand is expected to recover to 1,717 million MT, an increase of 3.8 % over 2020.⁴⁴

Global demand for rebar is also forecasted to slow. The International Rebar Producers and Exporters Association (**IREPAS**) said surplus supply and inadequate demand is set to dominate the long steel products markets, due to both the coronavirus outbreak and geopolitical issues.⁴⁵ This forecast is consistent with a slowing global construction sector, with WorldSteel forecasting global construction growth to slow due to the construction industry in some countries suffering an abrupt halt of projects due to supply chain disruptions and a shortage of workers during the pandemic lockdown period. However, it is expected that the decline in the construction industry will be less severe than during the financial crisis.

Nevertheless, WorldSteel considers that new construction project starts have also worsened due to the deteriorated balance sheets of consumers and businesses. Similarly, government attempts to put a focus on new construction projects in an effort to support demand may be hindered by significantly worsened government balance sheets that will confine their ability to carry out public infrastructure investments.⁴⁶

Global steelmaking capacity (in nominal crude terms) decreased from 2015 to 2018, but information available to the OECD (as of December 2019) suggests that capacity increased in 2019 for the first time since 2014. The net capacity change in 2019, taking into account new capacity additions and closures, brings current global steelmaking capacity up to 2,362.5 million MT, representing a 1.5% increase from the level at the end of 2018.⁴⁷ Most of the capacity additions in 2019 took place in Asia, where an additional 30.4 million MT of capacity came on stream.⁴⁸

The gap between global steelmaking capacity and production narrowed between 2016 and 2019 as a result of the decrease in global crude steelmaking capacity (i.e. by -0.2% from 2016 to 2019) and the gradual increase in steel production (an increase of 13.6% in the same period). In 2019, global capacity was 2,362.5 million MT and production was 1,848.5 million MT, therefore the gap between capacity and production has decreased to 513.9 million MT in 2019, from 520 million MT in 2018. WorldSteel production as a share of capacity has improved slightly, from 77.7% in 2018 to approximately 78.2% in 2019.⁴⁹

China is the world's largest steel producing country. In 2019, China produced 53.3% of the world's total steel production, producing a total of 996.3 million MT of crude steel. This was up from 920.0 million MT of crude steel production in 2018.⁵⁰ Efforts by the Government of China (**GOC**) to restrict additional steel-making

⁴³ <https://www.worldsteel.org/en/dam/jcr:96d7a585-e6b2-4d63-b943-4cd9ab621a91/World%2520Steel%2520in%2520Figures%25202019.pdf> at p. 3 (accessed on 30 May 2020)

⁴⁴ <https://www.worldsteel.org/media-centre/press-releases/2020/worldsteel-short-range-outlook-june-2020.html> (accessed, 5 June 2020)

⁴⁵ https://www.steelbb.com/?PageID=157&article_id=186254 (accessed on 30 May 2020).

⁴⁶ <https://www.worldsteel.org/media-centre/press-releases/2020/worldsteel-short-range-outlook-june-2020.html> (accessed, 5 June 2020)

⁴⁷ <https://www.oecd.org/sti/ind/steel-market-developments-Q2-2020.pdf> at p. 24 (accessed on 30 May 2020)

⁴⁸ <https://www.oecd.org/sti/ind/steel-market-developments-Q2-2020.pdf> at p. 24 (accessed on 30 May 2020)

⁴⁹ <https://www.oecd.org/sti/ind/steel-market-developments-Q2-2020.pdf> at p. 24 (accessed on 30 May 2020)

⁵⁰ <https://www.worldsteel.org/en/dam/jcr:f7982217-cfde-4fdc-8ba0-795ed807f513/World%2520Steel%2520in%2520Figures%25202020i.pdf> at p. 9 (accessed on 30 May 2020)

capacity and force the closure of older facilities have had some success at curtailing China's steelmaking capacity, with total capacity in China falling from 1,150 million MT in 2015 to 1,023 million MT in 2018.⁵¹ Evidence suggests that this trend could end, as there were several facility expansion projects that were expected to come online in 2019 that could add over 38 million MT in new steelmaking capacity in China.⁵²

The Commission sought clarification *...why this excess capacity that displaces production in the subject countries will necessarily be diverted to Australia as opposed to any other country in the Asian region?*⁵³ The answers are in fact included in the Commission's appraisal of the various exporters' ongoing relationship with the Australian market:

- all exporters maintained a presence in the Australian market, especially Korean and Singaporean exporters, and the parent company of the Spanish exporter the subject of these measures;
- all exporters maintained their ACRS certification in the Australian market;
- all exporters have maintained their distribution links to the Australian market. For example in the case of the Singaporean exporter, *...[t]he Commission considers that this indicates the exporter and importer have maintained an ongoing relationship, and that Australia remains an attractive market for Singaporean exports,*⁵⁴ and in the case of the Spanish exporter, the Commission observed *...that the CELSA Group has supplied the Australian market through its other mills following the imposition of measures. The Commission considers this an indicator that CELSA has maintained an ongoing relationship with importers, and that Australia remains an attractive market for Spanish rebar exports,*⁵⁵ and
- the Australian rebar market continues to show signs of stability.

These are all factors that make the Australian rebar market an attractive and accessible destination of exports of surplus domestic capacity, displaced by rebar from other sources.

7.6.2 [Commission's conclusion] Singapore

Despite agreeing with InfraBuild's position that ... a negative or negligible dumping margin is not in and of itself a determinant for the discontinuation of measures...⁵⁶ the Commission nevertheless builds its price analysis around the existence of a negative or negligible dumping margin for NatSteel:

*The Commission found exports from Singapore during the inquiry period to be at dumped prices, albeit the calculated dumping margin was negligible. Further, the Commission notes that duty assessments conducted in respect of NatSteel's exports after the imposition of measures have determined margins of a comparable degree, and in some cases, negative margins and a full refund of the IDD paid.*⁵⁷

⁵¹ <https://www.oecd.org/industry/ind/recent-developments-steelmaking-capacity-2019.pdf> at. p. 11 (accessed on 30 May 2020)

⁵² <https://www.oecd.org/industry/ind/recent-developments-steelmaking-capacity-2019.pdf> at. p. 12 (accessed on 30 May 2020)

⁵³ SEF 546, p. 56.

⁵⁴ SEF 546, p. 51.

⁵⁵ SEF 546, p. 52.

⁵⁶ SEF 546, p. 60.

⁵⁷ SEF 546, p. 62.

As the question of recurrence of dumping and injury is a prospective one based on facts, the evidence contained in InfraBuild's application for REV 566, indicates the following facts concerning the prospective behaviour of NatSteel in the period following the expiration of measures against it.

Firstly, the degree of price premium of NatSteel above any other exporter the subject of these measures has progressively eroded in the final two fiscal quarters of the 'inquiry period', and in the first two fiscal quarters in the period immediately following the 'inquiry period'. Table 2, above, indicates this. Specifically in the June 2020 quarter, NatSteel's price premium over the next lowest FOB export price was only 2.5 per cent, or within its current 3.0 per cent dumping margin. This is consistent with InfraBuild's assertion that since the end of the 'inquiry period', NatSteel's average export prices declined by 9.9 per cent.⁵⁸

Secondly, the Commission concedes that the measures have been effective at suppressing dumped exports by Singapore:

*...**prior to measures**, Singaporean export prices were **below the average of other countries' export prices** (not subject to measures). **Following measures**, Singaporean export prices were above that of other countries' export prices.*

Surely, this historical data indicates NatSteel's propensity to export rebar to Australia at dumped prices in the absence of measures, and the effectiveness of the current measures. When viewed alongside concurrent export price data available, this clearly discredits any view that the expiration of measures against NatSteel will not result in a recurrence of dumping and injury.

Thirdly, as to the conclusions drawn from the Commission's price undercutting analysis, InfraBuild again refers to its submission above that an absence of undercutting in the context of an IPP pricing model in fact confirms the existence of price injury caused by NatSteel. Clearly, if the Commission is observing price depression and price suppression with respect to sales of the like goods to NatSteel's sole Australian customer by the Australian industry, then it is unlikely that you will also observe price undercutting. The fact that NatSteel's prices to the Australian customer (noting the errors in the Commission's calculation of an EXW equivalent price), were above those of InfraBuild simply suggests that InfraBuild successfully made sales to this customer when it sufficiently depressed and suppressed its prices, and suffered volume injury; through lost sales to NatSteel; when it did not. These "lost sales" will not account with the Commission's price undercutting analysis, as they did not register as revenue, but remained "price offers" by InfraBuild to NatSteel's Australian customer.

Table 3, below, compares the net invoice price of sales of specific MCCs to NatSteel's sole Australian customer compared to all other customers for the same, specific MCC across the 'inquiry period'.

⁵⁸ SEF 546, p. 62.



Rebar Straights Sales January to December 2019				
MCC	Weighted Average Net Price AUD/t BESTBAR	Weighted Average Net Price AUD/t All Others	BESTBAR Price Variance from All Others	BESTBAR Net Invoice Value AUD
P-A-S-B-2-N				
P-C-S-B-1-N				
P-C-S-B-2-N				
P-C-S-C-1-N				
P-C-S-C-2-N				
P-C-S-C-3-N				
P-C-S-D-2-N				
P-C-S-D-3-N				
TOTAL				

Rebar in Coil Sales January to December 2019				
MCC	Weighted Average Net Price AUD/t BESTBAR	Weighted Average Net Price AUD/t All Others	BESTBAR Price Variance from All Others	BESTBAR Net Invoice Value AUD
P-C-C-B-C-N				
P-C-C-C-C-N				
TOTAL				

TABLE 3: Weighted average sales priced by MCC to BestBar and all other customers (Source: CONFIDENTIAL ATTACHMENT E)

Table 3, above, indicates the [REDACTED] experienced by InfraBuild on its sales of rebar on a model-by-model basis. As a significant source of supply for this importer; other than InfraBuild; is NatSteel, the [REDACTED] experienced by InfraBuild could only have been caused by NatSteel. Furthermore, as NatSteel only supplies this importer, the impact of the injury is confined to this mutual customer (of both NatSteel and InfraBuild). Therefore, it is reasonable to assume that in the absence of NatSteel’s “price offers”, the Australian industry would have been able to achieve [REDACTED] prices it achieved on a weighted average basis to all its other customers. The quantum of injury, in the form of lost profit, suffered by InfraBuild is material across the ‘inquiry period’, \$ [REDACTED] for just this customer.

The correct or preferable decision would be for the Commission to recommend to the Minister that the measures be continued against NatSteel as the sole exporter of the goods from Singapore, on the basis of the following facts:

- the significant decline (9.9 per cent) in NatSteel’s export price since the end of the ‘inquiry period’;
- the consistent export volume since the end of the ‘inquiry period’ (tracking at 49.1 per cent, December 2019 to May 2020);
- the historical propensity for NatSteel to lower its export prices in the absence of measures;

- the price depression and suppression suffered by the Australian industry in its sales of like goods to NatSteel's Australian customer; and
- InfraBuild's loss of sales volume to NatSteel.

In light of the above circumstances, it is not reasonable for the Commission *...to assume that a profit-making business that has historically been able to sell significant quantities of rebar at a higher price will not change its behaviour and reduce its prices at the detriment of its own profit margins.* NatSteel has demonstrated that in light of complementing its domestic production with imports, particularly from Turkey, it is utilising its historically related Australian customer and importer to displace surplus stock at reduced prices.

7.6.4 [Commission's conclusions] Taiwan

Since the initiation of REV 566, the Commission must re-examine whether:

- the volume of exports by the subject exporter from Taiwan remained *...minimal...*⁵⁹ since the end of the 'inquiry period';
- *...the export prices for the relatively low volume of Taiwanese exports during the inquiry period exceeded that of the ascertained floor price by a material quantum...*⁶⁰ continued to exceed the newly ascertained normal value in the period following the 'inquiry period'; and
- *...Taiwanese exports, even at a lower export price (and in greater volumes) would not have incurred any dumping duty...* in the period following the end of the 'inquiry period'.

CONFIDENTIAL CHART 4, above, indicates that in the period following the end of 'inquiry period', Taiwanese exporters **exported 88.3 per cent of the volume of all exports of the goods exported during the 'inquiry period'**. Furthermore, the weighted average export price of the goods exported in the period following the 'inquiry period', **declined by 34.8 per cent.**⁶¹

Additionally, Table 2, above, indicates that the Taiwanese (AUD denominated) export prices for the goods were the lowest of all the subject sources for every fiscal quarter since 1 July 2019.

In light of these significant changes, the facts and evidence do not support the conclusion that in the absence of measures there will not be a recurrence of dumping an injury by the Taiwanese exporters the subject of these measures.

8.5 [Non-injurious price] Commission's approach and assessment

Although InfraBuild supports the Commission's approach to establishing a non-injurious price (NIP) by calculating an unsuppressed selling price (USP) based on *...the constructed approach, using the Australian industry's CTMS data and a reasonable amount for profit...*⁶² InfraBuild remains concerned that the amount for profit determined based on *...profit margins in 2020 (July to September) under InfraBuild's revised rebar pricing policy...*⁶³. As explained in our submission dated 12 August 2020,⁶⁴ the forecast "profit" outcome was impacted by price depression and lost sales volumes caused by dumped import price competition. Therefore, the amount for profit is not an unsuppressed value, unaffected by dumping. The correct or

⁵⁹ SEF 546, p. 63.

⁶⁰ SEF 546, p. 63.

⁶¹ CONFIDENTIAL ATTACHMENT A.

⁶² SEF 546, p. 67.

⁶³ SEF 546, p. 67.

⁶⁴ EPR Folio No. 546/021.

preferable amount for profit to be allowed is the target return on investment - presented in the course of verification - [REDACTED] per cent.

9.4 [Form of measures] Commission's assessment

The Commission suggests that:

Consistent with the movement in scrap prices, an examination of rebar export prices across a similar period, as declared in the ABF import database in respect of exports from Korea and Spain broadly demonstrated a modest downward trend.⁶⁵

The relationship between scrap prices and export prices are not always correlated. For example, in the case of Korea, the KRW denominated scrap price declined by 6.9 per cent between the average for the REV 489 review period, whereas the weighted average KRW denominated export price declined by only 1.1 per cent. Since the end of the 'inquiry period', the average KRW denominated scrap prices since January 2020 declined by 9.1 per cent, whereas the weighted average export price declined by 7.6 per cent (for exports up to June 2020).⁶⁶ The export price decision is not correlated to scrap prices, therefore, the suggestion that the *ad valorem* method of duty calculation is appropriate in the circumstances is an unsound conclusion based on the facts and evidence.

The Commission cite the *Guidelines*⁶⁷ which specify that the *ad valorem* duty method has an advantage for goods which are subject to significant price variations over time because:

- a) it does not show the same variability in the 'effective rate' of the duty – as export prices fluctuate – that arises under the other methods; and
- b) may require less frequent reviews than other duty methods in this situation.

Irrespective of whether or not there is significant price volatility observed, there are several problems with the approach outlined in the *Guidelines*.

Firstly, the idea that variability in the 'effective rate' of the duty is a problem contradicts the primary objective for the measures of removing the injurious effects of the dumped and/or subsidised goods to the extent required. It is absurd to suggest that the *ad valorem* method somehow reduces this 'maligned' variability. The only way to reach that conclusion is to ignore the role and function of the duty assessment process. Thus, it may be that the *ad valorem* method may reduce 'variability' in a declining market (by not collecting a variable amount of duty), however, it reduces that variability at the expense of the Australian industry, who in fact observe an ever decreasing 'effective rate' collected as prices fall, irrespective of whether those lower export prices are at greater rates of dumping. On the other hand, an importer has the right to have repaid any amount of duty overpaid on a six-monthly basis.

Secondly, the idea that the *ad valorem* method "may require less frequent reviews" contradicts the purpose of a Division 5 review under the Act. The decision to initiate a review of measures is entirely independent of

⁶⁵ SEF546, p. 70.

⁶⁶ CONFIDENTIAL ATTACHMENT A.

⁶⁷ *Guidelines on the Application of Forms of Dumping Duty (the Guidelines)*, November 2013.

the form of duty calculation. The grounds to initiate a Division 5 review is based on observable changes in the variable factors. Therefore, the Australian industry fails to understand how this “less frequent reviews” outcome can be upheld as a relevant defence of the *ad valorem* method.

The Commission’s *Guidelines* list seven key considerations for the Combination of fixed and variable duty method. InfraBuild addresses each of the key considerations.

- *This form of duty, like the floor price duty method and fixed duty method, may not suit those situations where there are many models or types of the good with significantly different prices.*

Applied here, this consideration should not preclude the use of the combination method of duty calculation as there are only two models or types of goods: rebar in straight lengths and rebar in coil. Both these models/types do not demonstrate “significantly different prices”.

- *It is suited to circumstances where there are complex company structures with related parties; and where circumvention of measures is likely.*

This consideration is relevant for Daehan as the Commission’s exporter visit report in REV 489 noted “The company has seven subsidiary companies and one affiliated company”. In addition, Daehan has a reported recent history of the falsification of prices to gain a financial benefit.

*South Korea's Fair Trade Commission slapped six domestic steel companies with fines totalling Won 119.4 billion (\$105.7 million) for falsification of rebar prices, the commission said Sunday. The companies -- Hyundai Steel, Dongkuk Steel Mill, Korea Iron & Steel, **Daehan Steel**, Hwanyoung Steel and YK Steel -- rigged prices between May 2015 and December 2016 by reducing their discounts amid higher imports from China, the FTC said.⁶⁸*

- *It can be applied more precisely to certain goods in some cases.*

Again, this consideration is not relevant to rebar as there are only two models with similar costs and prices.

- *The ‘effective’ rate of this duty, when the duty has been imposed as a fixed amount per unit, diminishes in a rising market making it ineffective. The ‘effective’ rate increases in a declining market making it punitive.*

This is not relevant here as InfraBuild is not advocating for the combination method that uses a “fixed amount per unit”.

- *Consequently, reviews may be more likely due to the effects of a rising or falling market than would be the case with an ad valorem duty method.*

⁶⁸ NON-CONFIDENTIAL ATTACHMENT F.

The frequency of reviews, particularly for products that show price variability, should not be a determining factor in the Commission's decision to impose a particular form of measure. The Commission should be imposing the most effective measure to remove future injury to the Australian industry and annual reviews should be encouraged to ensure that measures are effective and contemporary.

- *The punitive effect in a falling market of the fixed form of this duty can have adverse effects on downstream industries. The Minister may need to consider these effects when deciding on the duty method.*

This is not a relevant consideration as InfraBuild is asking that the combination method employ a percentage amount for the fixed form component of the duty, not a set value. Even if the variable component of the combination became out-of-date there would be no punitive effect to downstream industries for a commodity product such as rebar. There are numerous exporters from a range of countries that have no dumping measures imposed that already have third-party quality accreditation to supply into the Australian market. Exporters in these countries include Portugal, Poland, Italy and New Zealand and several exporters in Indonesia.

- *The ascertained export price used in this measure can become out-of-date.*

It is widely recognised that both the normal values and the ascertained export price are likely to change and become out of that date. The Commission itself collectively refers to the them as the "variable factors". The legislation contains provisions such as Division 5 reviews and duty assessments to compensate for these changes. Importers that supply dumped product that causes material injury to the Australian industries and their supply chain partners are shielded from paying excess duty as detailed on the Commission's website:

To ensure that the amount of dumping duty collected by Customs does not exceed the actual dumping margin for each consignment over the five-year period, provision exists for assessment of the final duty liability. This system allows for any excess interim duty to be refunded where it is found that prices have changed since the original investigation or subsequent review.

Therefore, in all circumstances where there is a positive dumping margin determined for an exporter, then the combination form of interim duty calculation should be imposed by the Minister, with the variable component being based on the ascertained export price. Given the recurrent difficulties the Commission faced verifying the variable factors of all exporters in this inquiry, the relative reliability of the ascertained export price makes it a critical feature in the form of measures imposed, as the means of setting a floor price for exporters with zero dumping margins, and as forming the variable component of any combination form of duty calculation.

Where measures are continued against exporters with a negative or negligible dumping margin, then the floor price should be set in accordance with the ascertained normal value (where it is known with any

confidence or reliability) in the case of the former, and in the case of the latter, the combination form of measures.

9.4.1 [Form of measures] Korea

As indicated above, the evidence does not support the conclusion that there is any consistently meaningful correlation between movements in scrap prices and the verified or verifiable export prices for Korean exporters. Furthermore, the Commission is reminded of the recent history of export price behaviour by the key Korean exporter, Daehan.

For example, during the period from 1 April 2016 to 31 March 2017, Daehan's estimated normal value did not reduce in line with its export price,⁶⁹ resulting in a period of increased dumping which was incapable of remedy.

Therefore, to avoid a recurrence of the unremedied injury identified by the Australian industry in *Anti-circumvention inquiry No. 452*, InfraBuild contends that the combination duty method must be applied to Daehan and exporters generally from Korea so that any future attempts by these exporters to reduce their export prices by a degree greater than reductions in the domestic selling prices, will be prevented. This practice of exporter 'circumvention' may at least be frustrated, by the imposition of a variable method of duty calculation in the form of a floor price set at the ascertained export price, together with a fixed amount of duty at an *ad valorem* rate. This will ensure exporter compliance with the measures and improved effectiveness against ongoing injury to the Australian industry.

Indeed, the Commission originally recognised the susceptibility of the *ad valorem* method of duty calculation to exporter facilitated avoidance (through export price reductions designed to offset the impact of fixed amounts of duty on the prices of goods sold into the Australian market) in its *Guidelines*:

It has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty. That said, where such behaviour is observed when monitoring the measures an anti-circumvention inquiry can commence.

However, since *Anti-circumvention Inquiry No. 452*, even the Commission must now agree that the *ad valorem* method's susceptibility to exporter induced price reductions cannot be cured by the current anti-circumvention framework. As such the *ad valorem* method remains prone to unremedied ineffectiveness. Clearly Daehan was aware of this loophole when during *Investigation No. 264*, its representative wrote:

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.⁷⁰

Undeterred by the *ad valorem* measures imposed following *Investigation No. 264*, within five (5) months (by November 2015) Daehan began exploiting 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 (thereby dumping exports at rates in excess of the 9.7 per cent originally determined). It was no coincidence during

⁶⁹ EPR Folio No. 452/016, p. 22.

⁷⁰ EPR Folio No. 264/074, p. 2.

this period that the importer did not apply for any final duty assessments, as the amount of duty payable would have been found to have exceeded the amount of interim duty paid resulting in no refunds of interim dumping duties.

However, even if the current anti-circumvention framework is found to apply to instances of exporter facilitated price circumvention, rendering the *ad valorem* measures inutile, then the Australian industry may nevertheless not seek redress under the statutory framework until the amounts of final duty are determined. This may be up to a year after the injury caused by increased rates of dumping has recurred. The inequity of this outcome is obvious when juxtaposed against the importer's right to seek a repayment of duty overpaid under a final duty assessment, or, do nothing and realise the benefit of duty underpaid.

Furthermore, given the Commission's assessment that it *...was not able to assess the suitability of Daehan's domestic sales for the purposes of establishing the normal value under section 269TAC(1) as it was not satisfied of the completeness, relevance and accuracy of the data relating to a portion of Daehan's domestic sales and its CTMS...*⁷¹ the risk of the *ad valorem* rate (3.9 per cent) being wrong places the Australian industry at significant risk of a recurrence of injury. Given that the variable component of the measures will be based on the ascertained export price, which was capable of satisfactory verification, then the combination form of measures, is not only appropriate, but necessary, in these circumstances by reason of the exporter's own flawed, incomplete and unreliable normal value information.

CONCLUSIONS

The Commissioner's recommendation to the Minister is not confined to an analysis of the 'inquiry period' alone when considering the question whether the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent. The consideration need only be based on facts and evidence. InfraBuild has referred the Commission to evidence available to it beyond the 'inquiry period' that points to a recurrence of dumping and injury by all exporters of the goods the subject of the measure.

InfraBuild submits that the Commission has considered unreliable information when attempting to ascertain the export prices and normal values for certain exporters who have been determined to be uncooperative. The extrapolation of an historic export price based on the exporter's contemporary normal value, or vice versa, is an unreasonable approach and contravenes the basic tenets of anti-dumping law and practice, as it fosters an approach that ignores the differences between respective markets for the goods.

The Commission's approach to its undercutting analysis, especially with respect to the Singaporean exporter, is flawed in its calculation. The conclusions that may be drawn from price undercutting analysis in the context of an Australian market driven largely by import pricing pressures are limited – you would expect to see no price undercutting where sales occur at the lowest price. The reliance placed on this analysis by the Commission to justify their expiry recommendation for the Singaporean and Taiwanese exporters is unsound.

⁷¹ SEF 546, p. 39.



Export price and volume data capable of verification with Australian Border Force sources indicates that the export prices for all exporters the subject of measures has fallen, and the export volumes are either stable or increasing. Furthermore, there is evidence of growing price compression between these exporters.

InfraBuild recommends that the combination form of duty calculation be applied for all exporters with a positive dumping margin, even *de minimis*. Given the risks of unreliable information from uncooperative exporters, the variable component may be based on the most reliable variable factor known to the Commission. The floor price method should be the basis for duty calculation for any exporter with a zero or negative dumping margin.

The correct or preferable decision is for the Commissioner to recommend that the Minister take steps to secure the continuation of the anti-dumping measures against all exporters the subject of this measures, and that the dumping duty notice have effect to the exporters generally (except Nervacero S.A and Power Steel Co. Ltd), as if different variable factors had been ascertained.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT