

30 September 2020

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By email

Dear Director

Compañía Española de Laminación S.L. Continuation 546 – Infrabuild submissions and Review 566

We refer to the abovementioned continuation inquiry.

As you know, our client Compañía Española de Laminación S.L. (“Celsa Barcelona”) has already provided its comments to the Commission’s Statement of Essential Facts for Continuation 546, and did so within the 20 day period indicated by the Commission.¹ Since then, the Australian industry applicant (“Infrabuild”) has made a number of submissions, both concerning Continuation 546 generally and in relation to Celsa Barcelona specifically. The contents of these submissions, in our view, raise serious concerns of due process and integrity.

We express serious concerns regarding the legitimacy and due process of these recent developments, and are instructed to provide the following comments in response.

- 1 We are concerned to note the Commission’s decision to initiate Review 566 concerning the anti-dumping measures on steel reinforcing bar from Korea, Singapore, Spain and Taiwan, announced on 10 September 2020.² The same measure is the subject of an ongoing continuation or expiry review, being Continuation 546.
- 2 We understand that Continuation 546 and Review 566 are each intended to be a review under Article 11 of the WTO Anti-Dumping Agreement.
- 3 The application and the initiation of Review 566 appears to pay no genuine heed to the fact that a review is already on foot being Continuation 546, with a requested “review period” that substantially overlaps with the “inquiry period” of Continuation 546.
- 4 The disclosure document in Continuation 546 (“SEF 546”) indicates that the review proposes to deal with *all* relevant review issues pursuant to Article 11.2 and 11.3. We reject the concept that

¹ EPR 546-31

² ADN 2020/102 refers.

identical procedures with overlapping time periods can be conducted at the same time. There are two procedures now underway which have as their end-point a decision as to whether “*duty is necessary to offset dumping*”. To add further umbrage it is indicated in the newly initiated Review 566 that Spanish exporters are required to provide comprehensive responses to the exporter questionnaire before the outcome of Continuation 546 is due to be announced.

- 5 Clearly, the Commission must first complete Continuation 546 and decide if the subject measure “*shall be terminated on a date not later than five years from its imposition*”. Such decision must be informed by, and based on, the conduct of that inquiry itself. If, in light of the evidence collected and verified by the Commission in Continuation 546, the Commission is not satisfied that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury, then the subject measure must be allowed to expire. As a result, there is no measure to be further “reviewed”. It follows that the initiation of Review 566 creates an unlawful repetition of an existing procedure, which creates undue burden for the exporters concerned, Celsa Barcelona included.
- 6 We note that Infrabuild referred to the Commission’s “recently initiated” Review 566 in its submission lodged on the last day of the post-SEF interested party submission period in Continuation 546, which was the day before Review 566 was publicly initiated. We also take note that Infrabuild’s SEF submission openly suggests that its application for Review 566 was for the purpose of influencing the Commission’s consideration in Continuation 546. However, such an attempt to influence the Commission is misguided. The Commission already has verified information before it, as collected in the inquiry period, the force of which cannot be overborne by the snippets of unverified information that Infrabuild now seeks to advance. Unverified information in a different procedure extending beyond the inquiry period cannot overturn the body of verified longer-term information already amassed in Continuation 546. To proceed otherwise would be legally incoherent.
- 7 The proposed review period for Review 566 overlaps the inquiry period in Continuation 546 by six months. For exports from Spain, the continuation inquiry confirms that there were no exports in the inquiry period. Infrabuild alleges a decrease in Celsa Barcelona’s export price “*by 15.3%*”. In circumstances where there were no imports from Celsa Barcelona that could serve as a point of comparison, this statement is a fallacy.
- 8 Infrabuild has requested the Commission to conduct a full new review for only a small “new” review period that coincides with the height of the COVID-19 pandemic. Many parts of the world, Australia and Spain included, have put in place extraordinary and temporary measures, including measures concerning health and safety, as well as social and economic measures, to address the global pandemic. The sheer uncertainty and unforeseeable nature of the pandemic means that it is not possible to derive any conclusive view on its mid to longer term effect, and who might emerge relatively more or less badly affected. The measures that have been put in place and their impacts are “other injury factors” that must not be attributed to dumping.
- 9 Celsa Barcelona also takes note of Infrabuild’s latest submission in Continuation 546,³ which is based on mere speculation and unsubstantiated assertion, and has been submitted quite late in the process such that other interested parties are hampered in their ability to comment. In particular, Infrabuild asserts that:

³ EPR 546-35

- (a) the Commission should disregard the largest sources of imports to Australia for the purpose of the continuation inquiry;
- (b) the Commission should only refer to the extraordinary, unpredictable and unforeseeable effect of COVID-19 in the post-inquiry period, and ignore verified evidence provided by Celsa Barcelona for the inquiry period;
- (c) the Commission should find Infrabuild to have been “materially injured” by Celsa Barcelona, and to be likely to be “materially injured” by Celsa Barcelona in the future, by reason of “Spanish price offers” to “Infrabuild’s” customer.⁴

During the course of verification of the Australian industry’s financial information and claims made in its application for continuation, evidence of the direct impact of importer price offers of sales of the goods from Spain was presented to the Commission. The evidence established the cause and effect of the Spanish price offers, irrespective of whether resulting in a sales [sic] to Australia. This injury was independent and isolated from any injury caused by goods imported from other sources, irrespective of whether subject to these measures, other measures applicable to like goods, or from sources not subject to measures. [underlining supplied]

- 10 These assertions are unsubstantiated and illusional. More so, they highlight the “no-competition allowed” mentality and business culture being advocated by Infrabuild. We respectfully urge the Commission not to support or encourage such behaviour, as a matter of basic public policy.
- 11 Further, it is Celsa Barcelona’s understanding that the first half of 2020 was highlighted by the Australian industry’s attempt to “dump” its own product on the Australian market in order to compete with low priced imports from Turkey. Infrabuild has repeatedly asked the Commission to both ignore the biggest import source in the Australian market, selling at undumped prices, and to also ignore Infrabuild’s own pricing behaviour, both externally to customers who directly compete with imports, and internally to its affiliated companies which face no competition at all. Such claims must be recognised as incomprehensible in the context of the Commission’s existing injury and causation analysis for the continuation inquiry, and duly dismissed.
- 12 Our client respectfully and sincerely urges the Commission to have regard to the verified and duly-considered information pertaining to Continuation 546, for the purpose of that continuation inquiry, and not to be misled by Infrabuild’s latest claims. Further, we request the Commission to discontinue, revoke or suspend Review 566 immediately. The undue burdens placed on exporters may not be a significant legal concern to the Commission, however the carriage of two review procedures at the same time and in respect of substantially overlapping periods should be.

Yours sincerely



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⁴ EPR 546-035, at page 4.