

2 March 2021

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

**BY EMAIL:**  
**investigations2@adcommission.gov.au**

Dear Director,

**Anti-Dumping Review Panel Review No. 130 concerning steel reinforcing bar exported from Korea, Singapore, Spain, Taiwan**

**INITIAL AUSTRALIAN INDUSTRY SUBMISSION**

InfraBuild (Newcastle) Pty Ltd (**InfraBuild Steel**), an applicant for review of the Minister's decision under section 269ZH(1)(b)<sup>1</sup> refers to the recently published file note<sup>2</sup> on the Anti-Dumping Commission's (**the Commission**) electronic public record, inviting interested parties to make submissions to the reinvestigation being conducted pursuant to section 269ZZL concerning certain findings in REP 546.

We consider a number of comments contained in Panel Member Ellis' request for reinvestigation particularly pertinent to the Commission's conduct of its inquiries.

***Pricing information provided by InfraBuild Steel***

Firstly, Panel Member Ellis considered that *...regard should have been had to the pricing information contained in the continuation application...* supplied by InfraBuild Steel:

"Although the pricing information was provided to InfraBuild, and by InfraBuild to the ADC, on a confidential basis, the Act has a regime protecting the confidentiality of information provided to the ADC.

"It follows, in my opinion, that regard should have been had to the pricing information contained in the continuation application in relation to Korea. I do not agree with the view expressed at paragraph 47 of your submissions of 15 February 2021. A consideration of the pricing information

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<sup>1</sup> All legislative references refer to the *Customs Act 1901* (Cth) unless specified otherwise.

<sup>2</sup> EPR Folio No. 546/039 (26 February 2021).

might lead to a materially different outcome in relation to the findings identified above, so I consider they should be reinvestigated.”<sup>3</sup> (emphasis added)

***No linear relationship found between the domestic price of goods and the export price of the same goods***

Panel Member Ellis considered, and dismissed, the reliability of the Commission’s original approach of applying movements in the export price of goods between a past review period (REV 486/489) and the current inquiry period (CON 546) to the exporters’ normal value:

“On the other hand, a consideration of the determinations of the export price and normal values of the goods in past investigations reveals that there is no linear relationship between the two. For example, the normal value for Daehan ascertain in Review 486/489 [redacted] was 98% of the normal value ascertained in Investigation 264 [redacted]. The export price in Review 486/489 [redacted] was 103% of the export price in Investigation 264 [redacted]. This raises doubts about the reliability of changes in the export price as a guide to changes in the normal value.”<sup>4</sup>

InfraBuild Steel observes that one of the clearest examples of the non-linear relationship between the export price and normal values of the goods by the named exporter from Korea, Daehan Steel Co., Ltd. (**Daehan**) arose in the Commission’s consideration of the variable factors in the context of *Anti-circumvention Inquiry No. 452* concerning steel reinforcing bar exported from Korea by Daehan. In that inquiry, the Commission observed and concluded that:

“The Commission notes that Daehan’s normal value has reduced. To the extent that Daehan’s normal value has not reduced in line with Daehan’s export price is reflective of Australia and Korea being separate markets where pricing negotiations are different in each market.”<sup>5</sup> (emphasis added)

Although the example of *Anti-circumvention Inquiry No. 452* was not included in the Panel Member’s table attached to his request for reinvestigation, we consider that the Commission’s verified assessments of movements in Daehan’s normal value and export price during the circumvention period highly probative of that exporter’s asymmetrical pricing between its domestic and export markets for the goods.

***‘Relevant information’ within s 269ZZK(6) in conducting a reinvestigation***

Panel Member Ellis correctly acknowledges that the Commission *...is not confined to ‘relevant information’ within s 269ZZK(6) in conducting a reinvestigation*. Further, the Panel is capable; as Panel Member Blumberg decided in ADRP Report No. 107; of relying on a Reinvestigation Report that has taken into consideration information that was not ‘relevant information’:

“I agree with the ADC’s legal analysis, referred to above, that it is not limited to considering “relevant information” as defined in s.269ZZK(6) in preparing a Reinvestigation Report under s.269ZZL(2). It is reasonably clear from the terms of s.269ZZK, in particular s.269ZZK(4A), that the Review Panel must have regard to such a report, irrespective of whether the report contains information that is not ‘relevant information’. Moreover, the requirement in s.269ZZK(4) that the Review Panel have regard only to relevant information is expressed to be subject to subsection (4A) which, in turn, requires the Review Panel to have regard to the Commissioner’s Reinvestigation Report. Indeed, the language of

<sup>3</sup> Letter from Panel Member Ellis to Commissioner, Anti-dumping Commission dated 10 February 2021, pp. 3-4.

<sup>4</sup> *ibid.*, p. 4.

<sup>5</sup> Report No. 452, p. 21.

‘must’ in subsection (4A) makes it clear that the Commissioner’s Reinvestigation Report is a mandatory relevant consideration.”<sup>6</sup> (emphasis added)

Therefore, InfraBuild Steel submits CONFIDENTIAL ATTACHMENT A (Korean domestic price information) and CONFIDENTIAL ATTACHMENT B (Taiwanese domestic price information) for consideration in the context of this reinvestigation as a reasonable and relevant means of adjusting the normal values for both named and ‘other’ exporters of the goods from Korea and Taiwan (except Power Steel Co. Ltd).

In the case of Korean exporters, the additional information contained in CONFIDENTIAL ATTACHMENT A indicates that 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) to the average monthly published Korean domestic rebar prices for the ‘inquiry period’ (1 January to 31 December 2019), **increased by 6.9 per cent**. This is consistent with the 6.2 per cent increase indicated by the price information supplied by InfraBuild Steel in its original application for continuation.

***Opportunity to consider ‘new information’***

In his request for reinvestigation, Panel Member Ellis does not preclude the Commission from considering the additional information as to movements in the domestic prices of rebar for both Korea and Taiwan in InfraBuild Steel’s review application, now when conducting the reinvestigation. This additional information is again supplied in CONFIDENTIAL ATTACHMENT A and CONFIDENTIAL ATTACHMENT B.

Originally, the Commission informed the Panel Member that *...relying on the pricing information [supplied by InfraBuild Steel in its application for ADRP review] in relation to Taiwan would have had the effect of decreasing the already negative dumping margin*. On the basis of this information, Panel Member Ellis concluded that:

“Consequently, I have not requested a reinvestigation in respect of the normal value of Taiwanese exporters, although the same issue arises in that context as well.”

Given, that the Commission can now consider the additional information supplied in CONFIDENTIAL ATTACHMENT B, it is appropriate to revise your assessment of whether the new pricing information in relation to Taiwan would continue to have the effect of decreasing the dumping margin. If not, then it is appropriate to so inform the Panel Member so that he may assess whether or not he seeks to revise his decision to request a reinvestigation in respect of the normal value of Taiwanese exporters. InfraBuild Steel considers that this is an implied expectation of the Panel Member from his concluding remarks concerning the conduct of the reinvestigation:

“If you have any issues in relation to the reinvestigation or if you consider that a conference under s 269ZZHA of the Act would assist, please contact the Secretariat.

...

“If you require more time, including time to allow interested parties the opportunity to comment on an aspect of the reinvestigation, please contact the Secretariat.”

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<sup>6</sup> ADRP Report No. 107, *Ammonium Nitrate Exported to Australia from the People’s Republic of China, Sweden and the Kingdom of Thailand*, July 2020 at [399].



The decision to not continue the measures against the relevant Taiwanese exporters was based on an approach to the calculation of the normal value for those exporters, the Panel Member does not suggest this was the correct or preferable decision. The implicit reason against a request to reinvestigate the normal value finding for the Taiwanese exporter was the statutory constraint on what amounted to ‘relevant information’ at the time immediately prior to the reinvestigation request. Now that the additional information contained in CONFIDENTIAL ATTACHMENT B is open to the Commission’s consideration in the conduct of the reinvestigation, it follows that any revisions to your normal value findings ought also be brought to the Panel Member’s attention in so far as they materially alter his review of the correct or preferable decision. A positive, non-*de minimis* dumping margin, potentially resulting in a decision to continue the measures against an entire class of exporters must be considered to be a material change.

InfraBuild Steel has assessed the change in domestic sales values. When a comparison 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)<sup>7</sup> to the average monthly published Taiwanese domestic rebar prices for the ‘inquiry period’ (1 January to 31 December 2019),<sup>8</sup> is taken, the change across the two periods was only a **0.3 per cent decrease in Taiwanese domestic rebar prices.**<sup>9</sup>

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

FOR AND ON BEHALF OF THE

**AUSTRALIAN INDUSTRY APPLICANT**

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<sup>7</sup> 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)

<sup>8</sup> 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).

<sup>9</sup> CONFIDENTIAL ATTACHMENT B.