

16 November 2020

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

BY EMAIL:
investigations2@adcommission.gov.au

Dear Director,

Review of Anti-Dumping Measures No. 564 concerning rod in coil exported from China

AUSTRALIAN INDUSTRY RESPONSE TO STATEMENT OF ESSENTIAL FACTS NO. 564

InfraBuild (Newcastle) Pty Ltd (**InfraBuild**), the applicant and a member of the Australian industry producing like goods to the goods the subject of this review of anti-dumping measures (**REV 564**), refers to the *Statement of Essential Facts* published on 29 October 2020¹ in this matter (**SEF 564**); and makes the following observations and comments in response.

The use of paragraph numbers, headings and sub-headings below follow those contained in SEF 564.

5.3 Establishing a NIP

5.3.2 Commission's approach and assessment

We disagree with the Commission's assessment that the Australian industry's selling prices in the review period were suitable for determining an unsuppressed selling price (**USP**). The election of a hierarchy by the Commission when considering alternate methods for calculating a USP are unfounded in Australia's domestic law, but rather reflect a 'policy' preference. InfraBuild considers *the Australian industry's cost to make and sell (CTMS) plus a reasonable amount for profit*, always provides the correct or preferable approach to calculating a USP – as it ensures that the economic return necessary to attract and retain capital for the purposes of producing like goods in Australia is achieved in circumstances where it is applied to derive a NIP that is less than the ascertained normal value. As to the calculation of a *reasonable amount for profit*, InfraBuild proposes that the Commission consider the profit rate from the Australian industry's similar category of goods, specifically, merchant bar. Defined as hot-rolled steel sections in several shapes and

¹ EPR Folio No. 564/006.



sizes, merchant bar is not subject to anti-dumping measures and is considered a similar category of goods to the extent that they are produced from similar feed material (steel billet) and hot rolled. Details of the profit rate attainable for this similar category of goods are attached as CONFIDENTIAL ATTACHMENT 1. InfraBuild calculates an attainable rate of ████ per cent for the most recent 12-month period ending 30 September 2020.

5.4 Lesser duty rule

InfraBuild agrees with the Commission's preliminary recommendation to not apply the lesser duty rule on the basis that the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subparagraph 269TAC(2)(a)(ii) (particular market situation exists in China), as permitted under subsection 8(5BAAA) of the *Dumping Duty Act*.

6.1 Form of duty

InfraBuild further agrees with the Commission's preliminary assessment that the combination duty method continues to be the most appropriate form of duty.

The Commission's *Guidelines on the Application of Forms of Dumping Duty, November 2013 (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.*

There are effectively only two models of rod in coil sold in Australia; those designated as 'alloy' and 'non-alloy'; with the majority of the goods sold domestically and imported being of the 'non-alloy' model.

- *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 exporters from China, as there has been no cooperation. Therefore, it is not possible for the Commission to verify the complexity or otherwise of exporter's current company structures, or indeed whether there are related party associations to an exporter with an established distribution network to Australia. Imposition of the *ad valorem* method of duty calculation would enable any 'new' exporter to exploit any shortfall in duty collection; being unlikely to equally cooperate in an importer's final duty assessment.

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

There are effectively only two models of rod in coil sold in Australia; those designated as 'alloy' and 'non-alloy'; with the majority of the goods sold domestically and imported being of the 'non-alloy' model.

- *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.*

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 method became out-of-date there would be no punitive effect to downstream industries for a commodity product such as rod in coil. There are numerous exporters from a range of countries that have no dumping measures imposed.

- *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 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 industry 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 non-cooperation of exporters to this review, 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, and as forming the variable component of any combination form of duty calculation.

APPENDIX A – MARKET SITUATION ASSESSMENT

InfraBuild acknowledges the extensive research of the Commission concerning the ongoing existence of a particular market situation in the Chinese domestic market for rod in coil, and agrees with the Commission's assessment and conclusions.

A4.1 China's steel industry

According to industry reports, Chinese steelmakers hit new output record in September 2020, with recovery reported in export sales activity. According to reports:

total crude steel output dipped by 2.4% over the month to 92.56 million t in September, according to the latest data from National Bureau of Statistics (NBS).

However, taking into account one less day than in August, average daily production increased by 0.8% and reached the new historical high of 3.085 million t ...²

The China Iron & Steel Association recently predicted that China is likely to become a net steel exporter again in October 2020 following a period of being a net steel importer. The reason for this change is reported as follows:

This is because while overseas demand has gradually recovered, China's stimulus, issued in the first half of 2020 to boost its economy from the pandemic hit, has gradually faded away, some sources said, adding the Chinese domestic strength therefore is unlikely to largely surpass overseas market again.³

Similarly, reports recently (1 October 2020) predict that the Chinese long steel market may remain under pressure due to "soaring inventories and tighter monetary stimulus".⁴ These predictions are consistent with recent analysis indicating that growing production significantly exceeds real steel use in China resulting in a resurgence of excess inventory.⁵

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

² CONFIDENTIAL ATTACHMENT 2.

³ CONFIDENTIAL ATTACHMENT 3.

⁴ CONFIDENTIAL ATTACHMENT 4.

⁵ CONFIDENTIAL ATTACHMENT 5.