

27 October 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. 566 concerning steel reinforcing bar exported from Korea, Singapore, Spain, Taiwan

AUSTRALIAN INDUSTRY RESPONSE TO EXPORTER SUBMISSION – NATSTEEL HOLDINGS

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 566**), refers to the submission of the exporter from Singapore, NatSteel Holdings Pte Ltd (**NatSteel**), published on 2 October 2020¹ and makes the following observations and comments in response.

“New review in identical form to the existing continuation inquiry”

The variable factors ascertained under *Continuation Inquiry into Anti-Dumping Measures No. 546 (CON 546)* relate to a 12-month period ending 31 December 2019. Any decision by the Minister to publish a notice under s.269ZH(2) will not take effect until on and after 19 November 2020. In other words, if the Minister determines that the dumping duty notice continues in force after the specified expiry day as if different specified variable factors (relevant to the determination of duty) apply in relation to any one or more exporters, then by that time those variable factors will be almost eleven months old. On the other hand, by initiating REV 566, the Commission will verify the variable factors for a review period ending 30 June 2020. This ensures that as soon as practicable following any decision to continue the measures under CON 546, the most contemporary available variable factors may be ascertained relevant to the determination of duty. This is not, as the exporter alleges, “an abuse or process”, but to the contrary, an attempt by the Australian industry to ensure that the most accurate and effective measures are available to all interested parties.

¹ EPR Folio No. 566/005.

“That the variable factors relevant to the taking of the anti-dumping measures have changed...”

The test under s.269ZC(2)(b)² is not; as the Singaporean exporter wrongly asserts; whether ...*the Commissioner is already considering, and indeed has already assessed, the “variable factors” relevant to the taking of the measures...*³ but rather whether ... *the variable factors relevant to the taking of anti-dumping measures have changed...* . The variable factors relevant to the taking of anti-dumping measures last changed with the publication of a notice under subsection 269ZDB(1) on 31 May 2019.⁴ We know of no power under the Australian domestic law which allows the Anti-Dumping Commission (**Commission**) to “change” the variable factors by merely “considering” them in a *Statement of Essential Facts* in relation to CON 546. The power to change the variable factors rests with the Minister within our system, and only upon her making certain prescribed determinations under the Act.

Statement of Essential Facts (SEF) 546

We know of no provision within Part XVB that places the Commission’s “opinion” expressed in a SEF as tantamount to the recommendations contained within the Commission’s report to the Minister under s.269ZHF, or worse still, the Minister’s decision made under s.269ZHG.

No power to delay consideration of an application properly lodged under subsection 269ZA(1) for review of anti-dumping measures

With respect, we do not read into the provisions of s.269ZC(1) a power for the Commission to have ...*considered postponing any new review...*⁵. Consideration of an application under subsection 269ZA(1) for the review of anti-dumping measures must be concluded within 20 days after receiving the application.

Due process rights of interested parties including NatSteel

We fail to understand how an invitation by the Commission to participate in a review of current anti-dumping measures amounts to a refusal of the Singaporean exporter’s due process rights.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

² Legislative references are to provisions of the *Customs Act 1901*, unless expressly stated.

³ EPR Folio No. 546/005, p. 2.

⁴ ADN No. 2019/054 refers.

⁵ EPR Folio No. 546/005, p. 2.