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commercial + international

18 October 2021

The Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2600

By email

Dear Director

Compañía Española de Laminación S.L.

Review 566 – comments concerning Statement of Essential Facts

As you know, we act for Compañía Española de Laminación S.L. (“Celsa Barcelona”) in this variable factors review (“Review 566”).

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A Introduction

We refer to the Statement of Essential Facts for this investigation (“SEF”), published by the Anti-Dumping Commission (“the Commission”) on 27 September 2021.

PUBLIC RECORD VERSION

Celsa Barcelona takes this opportunity to provide its comments concerning the SEF, as invited by the Commission. We note that in finalising his recommendation to the Minister under Section 269ZDA(1) of the *Customs Act 1901* (“the Act”), the Commissioner is required to have regard to the comments of interested parties, such as those which now follow.

B Special circumstances in the review period require special consideration

In the SEF a preliminary dumping margin of 9.4% has been determined for Celsa Barcelona’s exports during the review period.

For context, we note the following key features with respect to Celsa Barcelona’s exports of the goods during the review period:

1. Celsa Barcelona received purchase orders from Australian customers in relation to small quantities of the goods in February 2020, just before the outbreak of the Covid-19 pandemic in March 2020. Those sales orders led to Celsa Barcelona’s exportation of the goods to Australia **[CONFIDENTIAL TEXT DELETED – timing of exports]**.
2. Celsa Barcelona’s Australian sales were made under Incoterm CPT, requiring Celsa Barcelona to be responsible for expenses associated with ocean freight and marine insurance and other export handling costs. The Covid-19 outbreak had a profound and unforeseeable impact on Celsa Barcelona’s Australian sales, in that it resulted in a sudden and significant surge in the export costs for which it was responsible. Celsa Barcelona did not expect these cost increases. There was no awareness on Celsa Barcelona’s part, nor indeed on the part of any other exporters, that Covid-19 would have these impacts. Celsa Barcelona did not accommodate these sudden and extravagant cost increases into its CPT prices for those Australian sales, and could not be expected to. This is because they were exactly as we have described them – sudden and extravagant.
3. The unforeseen surge in export costs such as ocean freight and fumigation costs were a key factor that caused the 9.4% dumping margin. The increased post exportation costs were deducted from Celsa Barcelona’s CPT price in order to work out the FOB export price, and the increased export handling and port charges expenses were adjusted by being added to the raw normal value.
4. **[CONFIDENTIAL TEXT DELETED – comments concerning absence of export since review period]**.

To put the impact of the unforeseen surge in export costs into perspective, we refer the Commission to the following:

- (a) For Review 566, the total amount of ocean freight, marine insurance and other handling expenses associated with Celsa Barcelona’s Australian sales, amounted to **[CONFIDENTIAL TEXT DELETED – number]**% of the CPT price, or **[CONFIDENTIAL TEXT DELETED – number]**% of the EXW price. This can be compared to the original Investigation 264 and Review 380, where Celsa Barcelona’s equivalent expenses accounted for only **[CONFIDENTIAL TEXT DELETED – number]**% of the CPT price or **[CONFIDENTIAL TEXT DELETED – number]**% of the EXW price for the Australian sales of the goods during the respective investigation and review periods.

- (b) Celsa Barcelona provided the following explanation regarding the unexpected ocean freight associated with its Australian sales of the goods in its response to the Commission’s exporter questionnaire in this review (“the EQR”):

It should be noted that the Australian sales during the POR were negotiated on a business as usual basis at the beginning of 2020, with sales order executed in February 2020. Shortly after, Spain and many other areas in the world experienced severe COVID-19 pandemic outbreak. This had the unexpected effect of causing an extreme shortage of shipping services and causing ocean freight costs to Australia to skyrocket. As Celsa had to honour the CPT sales term based contract with its Australian customers, this required Celsa to pay ocean freight cost at almost double the normal rate. Such circumstances were clearly unexpected, extraordinary and unprecedented. We refer to the following freight index chart demonstrating the sharp increases in ocean freight during March and April 2020:

Date	VCFI index	Monthly variation	Cumulative variation
9/2019	821.83	0.93%	-17.82%
10/2019	808.50	-1.62%	-19.15%
11/2019	1,299.90	60.78%	29.99%
12/2019	1,034.96	-20.38%	3.50%
1/2020	1,037.40	0.24%	3.74%
2/2020	956.90	-7.76%	-4.31%
3/2020	1,362.83	42.42%	36.28%
4/2020	1,838.07	22.69%	83.81%
5/2020	1,726.85	-6.05%	72.68%
6/2020	1,871.90	8.40%	87.19%

Thus, the ultimate ocean freight cost paid by Celsa did not reflect the normal level of cost factored-in by Celsa’s sales team at the time of negotiating the sales order. Celsa would like to raise this issue for the Commission’s attention – noting that the resulting FOB price based on the inflated ocean freight does not correctly reflect the export price expected and negotiated by Celsa and its Australian customer, nor the price at which Celsa’s product was intended to be introduced into the Australian market

- (c) Export handling costs were also much higher than expected. This was caused by the Australian Government’s special fumigation requirements for certain exporting countries, including Spain, to address stink bug infestation.¹ This expense was unexpected and unknown to Celsa Barcelona’s sales team at the time the sales orders were agreed. **[CONFIDENTIAL TEXT DELETED – commercial reasons for the lack of knowledge].**

We submit that the margin of dumping as calculated for the review period, even if mathematically correct, does not appropriately or correctly reflect Celsa Barcelona’s pricing behaviour with respect to its Australian sales. The dumping margin position in the review period is an unfortunate one. It is unfortunate in the sense that it was consequential upon the unforeseeable global pandemic and its disruption of the normal conduct of Celsa Barcelona’s international trade. The dumping margin which

¹ <https://www.icecargo.com.au/stink-bug-2020/#:~:text=The%20stink%20bug%20season%20in,end%20date%20of%2030%20April>

resulted was incidental and accidental. It was not reflective of the profitability level that Celsa Barcelona intended for its sales to Australia.

As such, Celsa Barcelona respectfully requests the Commission to recommend to the Minister that he should not alter the anti-dumping measure by reference to the variable factors ascertained in Review 566. We submit that the current dumping duty notice, determined as recently as Continuation 546, with 50% of the inquiry period overlapping with Review 566, remains a reasonable and appropriate measure.²

In the alternative, we ask the Commission to recommend that the current floor-price based dumping measure remain in place, with the price level updated by reference to the normal value or the non-injurious price as determined in this review. This would also be appropriate, because the normal value and non-injurious price were less affected by the exceptional circumstances that affected Celsa Barcelona's Australian sales and the corresponding ascertained export price. Such a recommendation is also appropriate because the Commission and the Minister can have confidence in the effectiveness of the current floor-price based measure. We say this because Celsa Barcelona ceased exporting to Australia immediately after completing the exportations of the goods during the review period, after realising the distortive effect of the Covid-19 economic conditions on its Australian sales. There have been no exports from Celsa Barcelona since the conclusion of the review period.

C Methodological issues concerning the dumping margin calculation

Without detracting from Celsa Barcelona's primary submission in this review in B above, we make the following comments on the dumping margin calculation method adopted with respect to Celsa Barcelona's exports in the SEF.

1 Adjustment for physical differences is warranted

In its EQR, Celsa Barcelona identified that an adjustment to a domestic sales prices based normal value is required:³

*...to account for the physical/grade differences between the goods exported to Australia
[CONFIDENTIAL TEXT DELETED – information about product type]*

This adjustment has not been made. The SEF states:⁴

Consistent with the reasons in the verification report, the commission has not adjusted the normal value for the specification adjustment claimed by CELSA. No evidence of price comparability was provided by CELSA and the commission's analysis of unit cost differences did not support an adjustment. [footnote omitted]

² The inquiry period for Continuation Inquiry 546 ("Continuation 546") was 1 January 2019 to 31 December 2019, and the review period for Review 566 was 1 July 2019 to 30 June 2020. Thus, the last six months of the Continuation 546 inquiry period was the first six months of the Review 566 review period. Continuation 546 was concluded on 10 November 2020, resulting in the continuation of the measure in relation to the goods exported by Celsa Barcelona. A floor-price based duty was determined in Continuation 546 with respect to Celsa's exports in the inquiry period.

³ See Celsa Barcelona EQR, at page 38.

⁴ SEF, at page 32

The Commission’s Exporter Verification Report for Celsa Barcelona (“the Verification Report”) provides a more detailed explanation of the decision, as follows:⁵

CELSA demonstrated that different grades of steel billet are used to produce rebar to different standards for the domestic and export markets. CELSA provided technical information showing the differences in chemical composition between the steel billet grades.

CELSA did not explain how these differences are reflected in the costs.

The verification team’s analysis shows that the unit cost differences for components of the cost to make are either inconclusive or higher for export MCCs compared to domestic MCCs.

On this basis, the verification team is not satisfied that the differences in steel billet grades affects the price comparability of domestic and export sales, and therefore does not consider this a valid adjustment.

Regarding “how these differences are reflected in costs”, Celsa Barcelona respectfully refers to its written explanation during the verification:⁶

[CONFIDENTIAL TEXT DELETED – confidential response explaining the production and characteristics differences between different grades].

Accordingly, the cost differences, as already explained, are reflected in the use of different billet and raw materials. Celsa Barcelona has already provided the Commission with the detailed cost breakdown with respect to the domestic 500SD product and the Australian 500N grade products produced during the review period.⁷

In relation to the Commission’s observation that “the unit cost differences for components of the cost to make are either inconclusive or higher for export MCCs compared to domestic MCCs” and its more specific comments concerning the individual raw material cost components, the Commission further explains:⁸

[CONFIDENTIAL TEXT DELETED – detailed verification analysis on confidential cost data]

We take this opportunity to address these observations, as they were not raised with Celsa Barcelona during the verification process.

Firstly, in relation to the comment that scrap and ferroalloy units were **[CONFIDENTIAL TEXT DELETED – comments about unit cost and comparison of domestic and Australian costs between different quarters]**, we note that Celsa Barcelona produced and sold the goods to Australia in only one quarter during the review period. Therefore, the level and comparison with domestic costs for scrap and ferroalloy in the other quarters of the review period are neither relevant nor informative.

Secondly, in relation to the observation that ferroalloy costs were higher for both export models, we note that ferroalloy costs represent less than **[CONFIDENTIAL TEXT DELETED – number]**% of Celsa Barcelona’s total cost to make the goods and like goods, and that the difference identified in the

⁵ Verification Report, at page 17.

⁶ Celsa Barcelona response to verification request for information 6.

⁷ See EQR, Attachment G-3.2.

⁸ Celsa Barcelona Verification– confidential cost data analysis for specification adjustment claim.

verification note is negligible. Further, Celsa Barcelona can advise that the [CONFIDENTIAL TEXT DELETED – explanation that confidential cost data comparison is affected by monthly variances].

Thirdly, we note that the Commission's observation in relation to the scrap cost difference is not inconsistent with the overall weighted average quarterly cost difference between the Australian grade 500N product and the Spanish grade 500SD, in that the Spanish grade on average experienced higher costs and demanded higher prices.

Fourthly, Celsa Barcelona can advise that grade differences indeed affect prices. As an example, we refer to Celsa Barcelona's price extra guidance for its domestic sales at **Attachment 1 [CONFIDENTIAL ATTACHMENT]**. The price guidance shows that Celsa Barcelona's B 400SD grade products were priced consistently lower, by about EUR[CONFIDENTIAL TEXT DELETED – number] per tonne, than the B 500SD grade products with comparable diameters. This demonstrates that specification differences in the form of grade differences affect price comparisons.

Lastly, Celsa Barcelona notes that its affiliated company, Nervacero SA, made a similar physical difference adjustment claim in Investigation 418. The issue was then considered by the Anti-Dumping Review Panel ("the ADRP") in ADRP Report No.80. In that ADRP review, the Commission's reason for rejection was upheld on the basis that the information presented by Nervacero related to Celsa Barcelona, not Nervacero:⁹

330. It appeared to me that the ADC's refusal to grant the adjustment based on lack of supporting evidence in Nervacero's own records of accounts, was reasonable in the circumstances.

Clearly, there is no such evidentiary deficiency in this review, as Celsa Barcelona's claim is based on its actual production cost record.

For the foregoing reasons Celsa Barcelona respectfully requests the Commission to reconsider the requirement for the normal value to be adjusted to account for the physical differences in accordance with Section 269TAC(8) of the Act.

2 Issues relating to Section 269TAC(8) adjustments

a Import duty related adjustment is warranted

In this regard, we refer to the following claim in the EQR:¹⁰

Celsa Barcelona would like to raise the following factors requiring adjustment to be made to the normal value to ensure fair comparison.

Firstly, when Celsa Barcelona sells to Australia, one of the circumstances of the sale is that the importer must pay a 5% import duty. When Celsa Barcelona makes a domestic sale, there is no such circumstance of sale. The import duty liability arising from importing Celsa Barcelona's goods into Australia represents a different circumstance of sale to Australia, as compared to domestic sales in Spain. The additional import duty means that Celsa Barcelona's export and domestic prices for like goods are "modified in different ways by taxes, or the terms or circumstances of the sales to which they relate." Accordingly, we submit that proper adjustment should be made to account for the effect of the 5% import duty applicable to Celsa Barcelona's exports, pursuant to section 269TAC(8) of the Customs Act 1901.

⁹ ADRP 2018/80.

¹⁰ EQR, at page 37.

This adjustment was not made. The SEF states:

In response to CELSA's REQ, InfraBuild submitted that post-exportation expenses such as import duties paid by importers would not be a relevant adjustment under section 269TAC(8). The commission confirms that no adjustment was made for import duty under section 269TAC(8).

The Verification Report provided an alternative explanation in this respect, stating:¹¹

CELSA exports to Australia on carriage paid to (CPT) incoterms and so does not pay the Australian import duties. The verification team therefore does not consider this a valid adjustment.

With respect, the Verification Report's treatment of this claim misses the point. As noted above, Celsa Barcelona's claim is framed entirely within the literal and conceptually correct meaning of Section 269TAC(8)(c) of the Act. Particularly, we have identified that Celsa Barcelona's domestic sales price for like goods and that price and the export price of the goods exported "are modified in different ways by taxes or the terms or circumstances of the sales to which they relate". The relevant question is whether those two prices are modified in different ways by, *inter alia*, the "circumstances" of the sale. This requires an examination of the key factors influencing the formation of Celsa Barcelona's export prices to Australia. The question of which entity bore the responsibility of paying the import duties is of limited assistance in this regard.

Although Celsa Barcelona does not pay the import duty itself, Celsa Barcelona is requested by its customer to set its Australian sales price by taking account of the effect of the import duty that would be applicable to the FOB value of Celsa Barcelona's price offering as part of its CPT-based price offers. As such, the applicability of the additional import duty materially influenced and modified Celsa Barcelona's pricing decision for its Australian sales differently to its pricing decision for its domestic sales.

Celsa Barcelona provides the following communication between its sales team and the Australian customer as an example:

[CONFIDENTIAL TEXT DELETED – commercial correspondences with Australian customer]

As shown in this example, the customer requested Celsa Barcelona to set its CFR price worked-back from an "effective price after duty paid" level. Celsa Barcelona did not have to pay for the import duty itself under such terms, however the effect of the import duty was incorporated into Celsa Barcelona's CPT-based export price.

We submit that the Commission should accept that the import duty applicable to exports from Spain was a factor specific to Celsa Barcelona's exports during the review period and did result in the domestic sales price for like goods and that price and the export price of the goods exported being "modified in different ways by taxes or the terms or circumstances of the sales to which they relate". In our view, the nature of adjustment required here is not principally different to the well-established "default" adjustment applied to differences in VAT refund rates, and to import duty drawbacks.¹²

¹¹ Verification Report, at page 17.

¹² We refer to the Commission's Dumping and Subsidy Manual, at pages 68 to 70.

b Exception for export expenses adjustment is warranted

As mentioned in B above, Celsa Barcelona's exports to Australia during the review period were affected by significantly high expenses that were unexpected. The key expenses were the ocean freight and the fumigation costs, each of which was well beyond the amounts Celsa Barcelona's team had factored into its CPT-based price offers. Due to the outbreak of Covid-19, ocean freight expenses surged from about March 2020, a time which coincided with Celsa Barcelona's shipping schedule for the Australian sales.

The Australian Government's special stink bug related fumigation measure was also unknown to Celsa Barcelona at the time of sale, [CONFIDENTIAL TEXT DELETED – commercial reasons for the lack of knowledge]. The fumigation expense, which was separately identified in this review,¹³ was part of the "handling and port charges" that amounted to [CONFIDENTIAL TEXT DELETED – number]% of EXW price or [CONFIDENTIAL TEXT DELETED – number]% of CPT price during the review period. This handling and port charge has been applied as part of the adjustment to normal value.¹⁴ Celsa Barcelona acknowledges that such an approach is normally the standard approach towards making direct expense-related adjustments. However the situation at the time was not normal. Previously, the total amount of Celsa Barcelona's ocean freight, marine insurance, and handling and port charges only accounted for [CONFIDENTIAL TEXT DELETED – number]% of its CPT price and [CONFIDENTIAL TEXT DELETED – number]% of its EXW price. In March 2020, they were [CONFIDENTIAL TEXT DELETED – number]% of the CPT price, this include ocean freight at [CONFIDENTIAL TEXT DELETED – number]% of the CPT price, and handling and port charges accounting for the other [CONFIDENTIAL TEXT DELETED – number]%. Fumigation charges accounted for about [CONFIDENTIAL TEXT DELETED – proportion] of the total handling and port charges.

Celsa Barcelona sincerely advises that it was unaware of the special fumigation requirement and had not factored the additional costs into its Australian sales pricing. That is, these additional handling and port charges were not known to and therefore could not have influenced Celsa Barcelona's prices for its Australian sales of the goods during the review period. Accordingly, Celsa Barcelona respectfully requests the Commission to exclude the effect of the fumigation expenses in applying the handling and port charges related adjustment.

D Conclusion

Once again, we respectfully urge the Commission to fully consider the exceptional and unforeseeable circumstances of Covid-19 as they impacted upon Celsa Barcelona's Australian sales during the review period. The unforeseen circumstances generated a margin of dumping that was incidental, accidental and temporary in nature, and not reflective of Celsa Barcelona's intended pricing for the Australian market. Celsa Barcelona had to honour its contract with its Australian customer as originally agreed despite the distortion caused to its export expenses. However, in light of the risks of dumping and the affected profitability for its Australian sales, Celsa Barcelona ceased exportation to Australia immediately thereafter.

The cessation of Australian sales has continued to date, notwithstanding the adoption of a floor-price based method as a result of Continuation 546.

In light of these special circumstances; Celsa Barcelona's absolutely *bona fide* cooperation in every investigation, inquiry and review conducted by the Commission with respect to its exports over the past

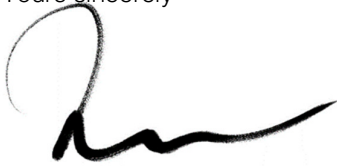
¹³ Handling costs were previously reported under the same heading as ocean freight in previous investigation concerning Celsa Barcelona.

¹⁴ SEF, at page 32.

seven years; and the fact that the accidental “dumped” exports from Celsa Barcelona would have had a relatively very low and short-lived impact on the Australian industry (both in terms of the import price and the volume), we submit that it would be appropriate, and open to the Commission, to recommend the following to the Minister in this review:

- that the dumping duty notice as it already applies to exports from Celsa Barcelona should remain unaltered; or
- that the dumping duty notice as applies to exports from Celsa Barcelona have effect as if different variable factors had been ascertained, with the form of duty remaining as a floor-price based method duty with the floor-price being either the non-injurious price or Celsa Barcelona’s normal value as ascertained for the review period.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Charles Zhan', with a large, stylized initial 'C'.

Charles Zhan
Partner