

18 October 2021

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

BY EMAIL:
investigations2@adcommission.gov.au

Dear Director,

Review of Measures No. 566 concerning steel reinforcing bar exported from Korea and Spain (except Nervacero S.A.)

AUSTRALIAN INDUSTRY SUBMISSION – RESPONSE TO STATEMENT OF ESSENTIAL FACTS

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, refers to *Statement of Essential Facts No. 566 (SEF 566)* recently placed on the electronic public record¹ and makes the following observations and comments in response.

At the outset, InfraBuild seeks to acknowledge the detail and analysis contained in SEF 566. Although; as discussed below, some additional disclosures remain necessary under due process principles; the report, generally, provides interested parties with a reasonable insight to the nature and reliability of the information before the Commissioner, and the Commission's approach to its analysis of that information. In recent times, the 'exception based' reporting style employed by the Commission has typically necessitated a protracted submission to be prepared in response to a report based on uncertainty concerning the nature of information before the Commission and how it was analysed. Pleasingly, the transparency afforded to interested parties concerning the Commission's considerations in SEF 566, permits interested parties to focus efficiently and directly on the remaining points of contention.

The use of headings (as quoted) below follow those contained in the exporter's submission.

¹ EPR 566/021 (27 September 2021)

“5.1.4 [Daehan] Adjustments”

InfraBuild observes that the Commission has adopted the correct approach to calculating the amount of the specification adjustment to be applied to the normal value for the export MCC category P-C-C-C-N. The approach; which reflected Daehan’s verified domestic selling prices; most accurately tests the effect of the difference in specifications between the MCC categories on price as required under s.269TAC(8).²

We also commend the Commission for providing details of the nature of the impact of most of the adjustments applied to the normal value under s.269TAC(8). It is therefore unclear why the Commission failed to provide a similar level of detail for the impact of the specification adjustment. We note that an indication of an upward or downward movement discloses no confidential information, but does permit stakeholders a reasonable understanding of the substance of the information and the opportunity to provide meaningful feedback (based on market observations) to the Commission; the basic standard of disclosure prescribed under s.269ZJ(2).

Therefore, InfraBuild requests the Commission clarify whether the specification adjustment had an upward or downward effect on Daehan’s normal value.

“7. Non-injurious price”

InfraBuild considers the Commission’s approach to the calculation of the unsuppressed selling price according to the constructed approach, with a reasonable amount for profit based on profit projected under its rebar pricing policy, to be the correct or preferable decision.

“8. Form of measures”

We acknowledge that the Commission has proposed the correct or preferable form of measures; interim duties calculated by reference to fixed and variable (combination) components; for these recidivist dumping exporters.

Daehan’s long, and repetitive, pattern of exporting rebar to Australia at dumped prices is established, and only the combination method of duty calculation ensures that the correct amount of interim duty is collected.

Similarly, the risks associated with the complex company structure to which Compañía Española de Laminación SL (**Celsa**) belongs, is a key consideration the Commission’s *Guidelines on the Application of Forms of Dumping Duty* (November 2013) points to as a reason to apply the combination form of measures *...where circumvention of measures is likely*. Specifically we direct the Commission to Panel Member Ellis’ conclusion in *ADRP Report No. 130* concerning the interaction between exporters and entities belonging to the Celsa Group of Companies:

Where an exporter is part of a group of companies, the behaviour of the group as a whole and of other members of that group can be illuminating. Measures were initially imposed on both Celsa

² All legislative references are to the *Customs Act 1901*, unless otherwise specified.

Barcelona and Nervacero as a result of Investigation 264,²⁸ but, as a result of a review by the Panel, the decision to impose measures was set aside in relation to Nervacero only.²⁹ The Measures continued to apply to Celsa Barcelona. During the period that the Measures were imposed on Celsa Barcelona, but no measures were imposed on Nervacero, exports to Australia from Nervacero increased ‘significantly’.^[30] Exports from Nervacero were dumped. During that same period, exports from Celsa Barcelona decreased. This suggests that the Celsa groups changed exporters in response to the Measures. It also suggests that if the Measures are not continued, exports to Australia by Celsa Barcelona would resume and that, to some extent, those exports would be in substitution for exports from Nervacero. This inference is also open in respect of exports to Australia from Celsa’s mill in Poland. This suggests that the imposition of the Measures was causally related to the cessation of dumping by Celsa Barcelona and that dumped exports would resume if the Measures were not continued.³ [emphasis added]

Powers of the Minister in relation to review of anti-dumping measures

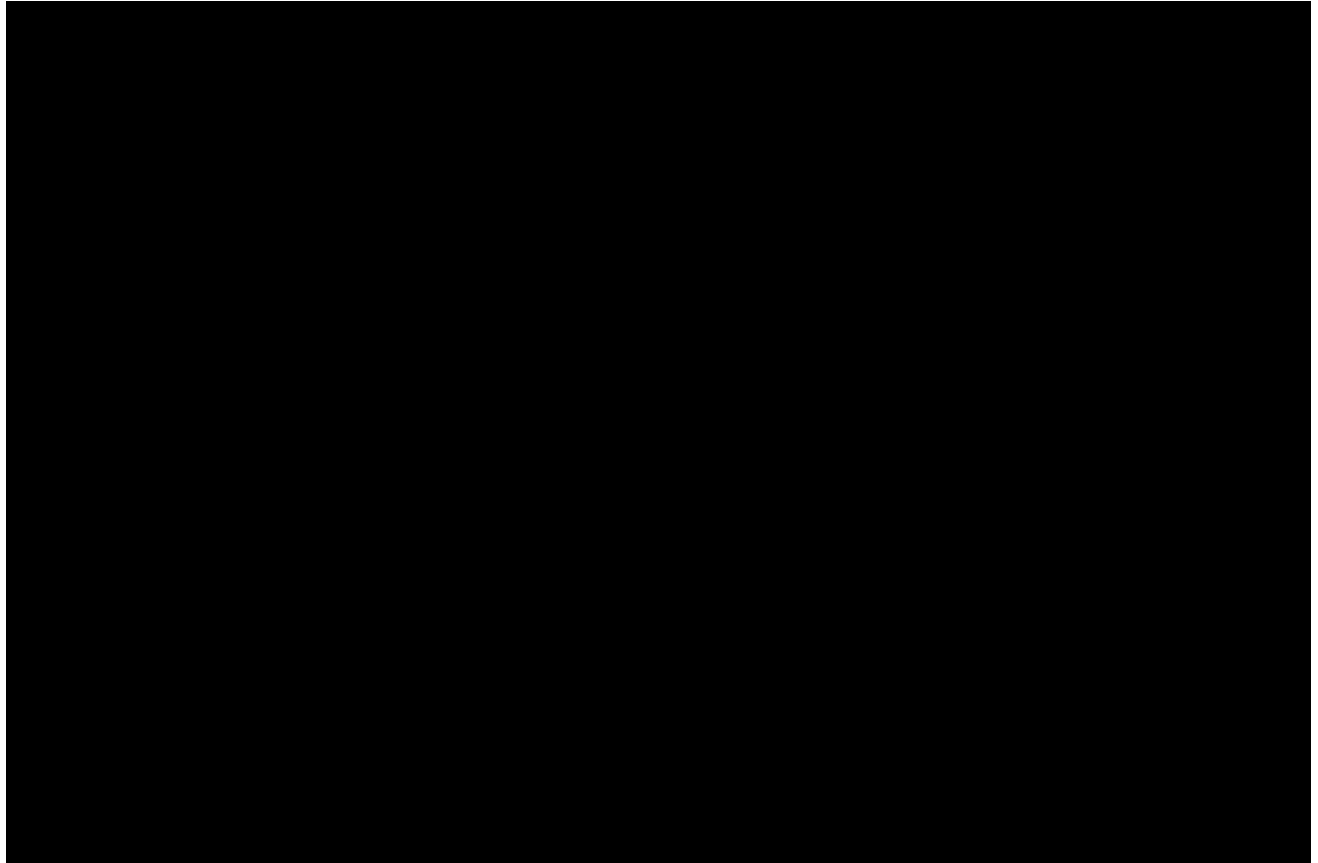
The outcome of a Division 5 Review of measures is prospective. Subject to the operation of s. 269ZDB(6)(a), the review determines the dumping measures that will be applicable to exports by those parties the subject of the review in the future. Again, subject to s. 269ZDB(6)(a), a declaration will not affect the duty payable in respect of goods that have been entered into Australia before the declaration under s. 269ZDB is made.

However, s. 269ZDB(6)(a) does permit the Minister to make a declaration which has limited retrospective effect – enabling the Minister to “back date” the declaration to the date of publication of the ‘initiation’ notice under s. 269ZC.

InfraBuild readily observes the practice of exporters (subject to a Division 5 Review of measures), following publication of an initiation notice under s. 269ZC, but before the declaration under s. 269ZDB is made, increasing the volume of exports to Australia - especially in circumstances where there is an expectation of the variable factors changing in such a manner that will increase their future duty liabilities. As such, these exporters are exploiting any duty advantage they perceive to have during the intervening period.

CONFIDENTIAL CHART 1, below, indicates the changes in export volumes of rebar from Korea since the commencement of the review period. In summary, volumes reached historically high values following initiation of *Review No. 566*, and in particular in the month of, and preceding, the publication of Saehan’s Verification Report.

³ ADRP Report No. 130, p. 33.



CONFIDENTIAL CHART 1 Export volumes of rebar from Korea since July 2019 (Source: CONFIDENTIAL ATTACHMENT A)

In this case, the named exporters from Korea and Spain had their *Verification Reports* published on 23 April 2021⁴ and 22 September 2021,⁵ respectively. The “preliminary” dumping margins found by the verification team in those reports were upheld in SEF 566. It is InfraBuild’s view that upon the publication of the exporters’ Verification Reports, the importers have in effect, constructive notice of their future duty liability.

Therefore, for this reason InfraBuild considers that the Commission should as a matter of practice recommend to the Minister that any declaration made under s. 269ZDB(1) should specify, at the latest, the date on which exporters’ verification reports were published to be the date on which the declaration is to be taken to have had effect, either in relation to a particular exporter or to exporters generally, as if the Minister had fixed different variable factors in respect of that exporter or of exporters generally, relevant to the determination of duty.

Such a practice would ensure that the interests of the importer (in terms of their constructive knowledge of their variable factors) and the interests of the Australian industry (in terms of avoiding additional injury from an importer exploiting the delay in updating the variable factors) may be fairly balanced.

Applied here, InfraBuild seeks the Commission recommend to the Minister that the notice declaring the outcome of Review 566, specify **23 April 2021** as the date on which the declaration is to be taken to have had effect, to Daehan and exporters generally from Korea, and **22 September 2021** as the date on which the

⁴ EPR Folio No. 566/016.

⁵ EPR Folio No. 566/020.

declaration is to be taken to have had effect, to Celsa and exporters generally from Spain (except Nervacero S.A.), as if the Minister had fixed different variable factors relevant to the determination of duty.

Conclusions

Although InfraBuild, generally, approves of the Commission's analysis and approach in SEF 566, it does consider that some indication of the nature of effect of the specification adjustment needs to be provided.

The calculation of the unsuppressed selling price for the determination of the non-injurious price is entirely appropriate, and the combination method of duty calculation is in line with the considerations set out in the Commission's *Guidelines*.

Finally, given the delays in the conclusion of this review, and the exponential growth in export volumes of rebar from Korea immediately prior to the publication of the named exporter, Daehan, *Verification Report* indicating its dumping margin having increased to 4.7%, InfraBuild considers that it is imperative that the Commissioner recommend that the effective date for the revised variable factors commence on or about the date of publication of that exporter's Verification Report on 23 April 2021.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT