

26 July 2021

The Director, Investigations 1
Anti-Dumping Commission
GPO BOX 2013
CANBERRA ACT 2600

BY EMAIL:
investigations1@adcommission.gov.au

Dear Director,

Dumping Investigation No. 584 concerning Merchant Bar exported from Taiwan

AUSTRALIAN INDUSTRY RESPONSE TO EXPORTER SUBMISSION

InfraBuild NSW Pty Limited (**InfraBuild**), refers to recent submissions published on the *Electronic Public Record*:

- the submission of the Taiwanese exporter, Feng Hsin Steel Co., Ltd (**Feng Hsin**), dated 7 July 2021¹ concerning proposed modifications to the model control code (**MCC**) structure; and
- the submission of the Australian importer, Macsteel International Australia Pty Ltd (**Macsteel**), published 22 July 2021² concerning the examination and assessment of the Australian industry's material injury claims.

1. Submissions are in non-compliance with subsection 269ZJ(2)³ and unless remedied must be disregarded

For the purpose of s.269ZJ(1), the Commission must maintain a public record of the investigation. To the extent that information given to the Commission is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests, then s.269ZJ(2) requires the person giving that information must ensure that a summary of that information ...*contains sufficient detail to allow a reasonable understanding of the substance of the information.*

¹ EPR 584/007

² EPR 584/008

³ Legislative references are to the provisions of the *Customs Act 1901*, unless specified otherwise.

Neither the submission of the Taiwanese exporter, nor the submission of the Australian importer contain sufficient detail to allow a reasonable understanding of the substance of the information claimed.

Taiwanese exporter's claimed Model Control Code amendments

For example, with respect to the Taiwanese exporter's submission with all relevant details of the proposed changes to the MCCs redacted, all that can be deduced is that the exporter is seeking a further size category, and a number of grade categories be introduced to the MCC. There is no detail of the values proposed.

To the extent that we are able to infer elements of the Taiwanese exporter's claim, we observe that the current MCC categories published under Anti-dumping Notice 2021/073⁴ already contain five separate shape categories and three separate grade categories:

Item	Category	Sub-category	Identifier	Sales Data	Cost data
1	Quality	Prime	P	Mandatory	N/A
		Non-prime	N		
2	Shape	Flats	F	Mandatory	Mandatory
		Equal angles	E		
		Unequal Angles	U		
		Parallel flange channels	P		
		Tapered flange channels	T		
3	Grade - Minimum yield strength specified by the Standard the product is certified to be produced to (measured in megapascals (MPa) or Newton per square millimetre (N/mm ²)) ⁶	Less than 275	250	Mandatory	Mandatory
		Equal to or greater than 275 and less than 330	300		
		Equal to or greater than 330	350		

It is unclear whether the size category proposed by the exporter applies to one or more of the shape categories. It is also unclear whether the grade categories proposed are in addition to the existing defined grade categories or an alternative categorisation based on minimum yield strength (physical characteristic) or a 'base grade' with a 'price extra' (i.e. exporter-specific characteristic).

Australian importer's claims

With respect to the Australian importer's submission, apart from reciting section headings of the Australian industry's application document, all details contained in the 'explanation' column have been redacted. Accordingly, the Australian industry is left with no understanding of the substance of the importer's information and claims. This amounts to a serious denial of procedural fairness, as

⁴ EPR584/003 at p.5

the importer seeks to prosecute a critique of the Australian industry's injury claims in complete secrecy and with no opportunity of rebuttal.

Therefore, in accordance with s.269ZJ(5), unless the Taiwanese exporter and Australian importer, each agree to either include the information in the public record, or prepare a summary of the information for inclusion on that record that allows a reasonable understanding of the substance of the information, then the Commissioner is obliged to disregard the information currently submitted.

2. Adjustments for physical characteristics must not be based on price lists

The Taiwanese exporter states:

*Where the export grade is not sold domestically or not in sufficient volumes, **the Commission should refer to the extras price list** for determining the corresponding grades that are most comparable to the exported grade. **This would avoid the need for making necessary adjustments to domestic prices for characteristics which are demonstrated to affect price.***
[emphasis added]

And further:

*Alternatively, if the Commission opts to leave the proposed MCC structure unchanged, Feng Hsin contends that the extras price list clearly demonstrates that prices are impacted by the various grades purchased by customers. To ensure proper comparison, domestic prices would require **adjustment by reference to the domestic extras price list**, for grade differences when compared to the exported goods.⁵ [emphasis added]*

Despite the insistence of the exporter's representative that physical characteristics adjustments to domestic sales be made *...by reference to the domestic extras price list...* InfraBuild urges the Commission to base any adjustment on the actual demonstrated pricing differences observed for different grades in domestic sales. InfraBuild's approach is consistent with the *Dumping and Subsidy Manual*,⁶ that provides in relevant part:

*The Commission seeks relevant data and makes adjustments where **evidence exists that a particular difference has affected price comparability** ... Adjustments may be based upon **actual ...selling prices** achieved, for the sales transactions under examination.⁷*

Accordingly, the Manual requires that a particular difference has in fact affected price comparability. Evidence of price list differences alone, would not meet the evidentiary standard set by the *Dumping and Subsidy Manual* and previously applied by the Commission. For example, in the Commission's

⁵ EPR584/007 at pp.2-3

⁶ Anti-dumping Commission, *Dumping and Subsidy Manual*, November 2018

⁷ *Dumping and Subsidy Manual*, p. 65.

recent reinvestigation of certain findings in *Report Nos. 486 and 489*, the Commissioner dismissed the Australian industry's claim of a price difference based on a 'quote':

In its submission, InfraBuild also referred to evidence of a price difference between grades SD420 and SD490 (a comparable grade to 500N) in the form of a quote from a Taiwanese producer of rebar. [original fn 43] As the evidence provided is a single quote in relation to an export sale, the Commission does not consider that this quote reliably reflects the price difference between grades SD420 and SD490 in the Taiwanese market. These concerns were outlined in a confidential attachment to the Commission's submission to the ADRP...

In addition, due to the confidentiality of the quote claimed by InfraBuild, the Commission was not able to test the reliability and reasonableness of the price difference shown on the quote with other parties. Accordingly, the Commission does not consider that it is preferable to rely on this quote to establish a price that grade 500N may have been sold in Taiwan.⁸

Applied here, the exporter's claim that physical characteristics adjustments to domestic sales be made *...by reference to the domestic extras price list...* fail on similar grounds. The existence of a price list alone does not demonstrate actual price differences realised by the exporter in the Taiwanese domestic market. Furthermore, the exporter's claimed confidentiality places the alleged price difference in conflict with the Commission's previous treatment of such claims.

List price not necessarily a reflection of actual price

To expand on our submission that a 'list price' does not necessarily reflect Taiwanese domestic market conditions, we refer to a recent article published by Mysteel⁹ (extract below), in which Feng Hsin is reported to have raised the rebar list price by TWD200/t for the week. However, an official explains that the actual price will be TWD400/t higher due to a cancellation of a discount that had applied.

⁸ *Reinvestigation Report 486 and 489 – Reinforcing Bar – Korea and Taiwan*, pp. 20-21.

⁹ <https://www.mysteel.net/article/5024287-0501/Taiwan-Feng-Hsins-rebar--scrap-prices-climb-for-2nd-week.html> (accessed 23 July 2021)

Taiwan Feng Hsin's rebar, scrap prices climb for 2nd week

Source: Mysteel Jul 05, 2021 18:30 See Full-size Table Here

ABSTRACT

Feng Hsin Steel, Taiwan's largest rebar producer, has decided to raise its rebar list price and its buying price of locally-sourced scrap for the second week over July 5-9 to encourage scrap deliveries, a company official confirmed on Monday.

With the latest adjustment, Feng Hsin's list price for 13mm diarebar will be TWD 23,200/tonne (\$832/t) EXW for sale still this Friday, higher by another TWD 200/t on week after the prior week's TWD 300/t rise. However, its actual rebar sales price for this week will be TWD 400/t higher from last week, the official explained, as "we have cancelled the discount of TWD 200/t

The list price, whether for rebar or merchant bar or another product, is merely a guide for customers as to where prices are trending, prices to individual customers may vary considerably depending on the circumstances of the sale, discounts offered and range of products purchased.

Further, in a 2015 interview with Metal Bulletin¹⁰, Feng Hsin representatives outlined their strategy for increasing their export sales, including to Australia, through small-volume, large-variety cargoes:

"In the past, we used to export less than 10% of our sales, but now the share is 10-15%," he said.

The problem is that mills in Taiwan and those elsewhere need to compete with Chinese mills in the international market, and "you can't beat China at any price", Lin pointed out. "So our strategy right now is to export small-volume and large-variety cargoes.

"For example, small volumes with a complex mix of steel products: different grades, different sizes and different packing in a single deal," he said.

"The Chinese will always win and it's easy for them to win in volume and price, but in this kind of situation, they just give up," he said. "This is too small, they don't want it, they just pass on it."

*Feng Hsin has been employing this strategy with buyers in Singapore, **Australia**, Hong Kong and Malaysia, among other markets. [emphasis added]*

¹⁰ <https://www.fastmarkets.com/article/3508640/interview-feng-hsin-investing-76m-in-new-rebar-mill> (accessed 23 July 2021)

Given the range of products Feng Hsin produces, it is highly likely that a similar strategy is employed for domestic sales where a price for a range of products is negotiated with a customer and individual products are not necessarily priced according to a price list. It is important that actual realised product sales prices are considered as the basis for adjustments rather than list prices and price extras lists that are likely used merely as a guide in pricing negotiations.

Conclusions

InfraBuild submits that the level of redaction applied by the Taiwanese exporter, and the Australian importer, in their respective submissions, is so extensive that the 'summary' placed on the public record does not contain sufficient detail to allow a reasonable understanding of the substance of the information. This is in non-compliance with s.269ZJ(2) and, unless remedied, ought to be disregarded by the Commissioner under s.269ZJ(5).

Further, the Taiwanese exporter's claimed price difference based on a confidential, *domestic extras price list* does not meet the standard for evidence required by the *Dumping and Subsidy Manual*, and the past practice of the Commission when considering its probative value. The Commission must consider whether any claimed price difference is in fact reflected in the actual, realised domestic transactions of the Taiwanese exporter, as verified.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT