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Director, Investigations Unit 4  
Anti-Dumping Commission  
GPO Box 2013  
CANBERRA ACT 2601  
AUSTRALIA

### **Dumping Investigation into Merchant Bar exported from Taiwan**

Dear Director,

Please accept this submission made on behalf of Feng Hsin Steel Co., Ltd (Feng Hsin), which responds to numerous issues raised by Infrabuild in its recent submissions, and provides preliminary views on the Commission's Infrabuild verification report.

#### **1. Infrabuild submission – 21 January 2022**

Infrabuild alleges in its submission that importers are intentionally importing the subject goods and undercutting its prices, with a view to '*gaining sales volumes by exploiting delays*' in the investigation.

Whilst details of the importers and exporters referenced in Infrabuild's submission have been redacted, Feng Hsin wishes to make clear that these assertions are not applicable to its exports. This is confirmed by the monthly shipment volumes since the initiation of the investigation in May 2021.

#### **TABLE AND CHART REDACTED**

The data confirms a [REDACTED] [trend] in Feng Hsin's export sales volumes since the commencement of the investigation. Accordingly, Infrabuild's allegations have no relevance to Feng Hsin exports.

#### **2. Infrabuild submission – 24 February 2022**

- a) Model control codes (MCCs)

Infrabuild queries the amendment to the MCC structure which takes into account the price

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premiums for different standards and dimensions, offered by Feng Hsin on its domestic sales of like goods.

Feng Hsin does not consider it necessary to respond to each of the points made by Infrabuild. However, it is worth noting that the MCC structure proposed by Feng Hsin to include price premiums for different standards and dimensions applies equally to both Australian export sales and Taiwanese domestic sales.

It is also important to note that Feng Hsin provided clear evidence to support the material impact on domestic prices stemming from the different standards and dimensions. This is critical given that the MCC structure is designed to ‘... *capture differences in physical characteristics that give rise to distinguishable and material differences in price.*’<sup>1</sup>

Nothing presented by Infrabuild in its submission disproves the observed price differences evident in domestic sales of like goods. It questions whether the Commission has properly complied with the stated aims of the MCC structure as it believes that it does not ‘...*facilitate a consistent approach to assessment across exporters.*’

Again, Infrabuild’s view overlooks that the Commission’s policy and practice<sup>2</sup> allows that a MCC structure ‘...*specific to an exporter may be considered on a case by case basis*’, and modification may be appropriate ‘... *where certain models sold by the exporter do not align within the proposed MCC structure, such as models specific to the exporter; unanticipated factors that the Commission did not have regard to in determining the MCC; or new information on the characteristics that is put before the Commission.*’

### b) Date of sale

Infrabuild states that it is unclear whether Feng Hsin was able to comply with the Commission’s evidentiary threshold for demonstrating its date of sale claim. The point made is confusing given that the Commission’s verification report<sup>3</sup> makes it abundantly clear:

*The verification team examined the evidence available, and tested Feng Hsin’s claims. For Australian sales and for any domestic sales with corresponding purchase orders, the verification team found that the purchase order details the unit price for goods purchased, and this price remains unchanged with respect to invoicing. For any domestic sales without purchase orders, the verification team found that the material terms of the purchases were set at the time of order through Feng Hsin’s online ordering system. Accordingly, the verification team finds that the order date should be used as the date of sale for Australian and domestic sales.*

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<sup>1</sup> ADC Manual, November 2018, page 60

<sup>2</sup> Ibid., page 62.

<sup>3</sup> EPR 584, Record no. 24, page 15.

### **3. Infrabuild submission – 28 February 2022**

In its submission, Infrabuild claims to have presented evidence to the Commission which it suggests refutes Feng Hsin's view that imports did not cause material injury prior to November 2020. Infrabuild continues to ignore its clear statement contained in its application that 'material injury arising from the volume and price effects of the dumped goods exported from Taiwan commenced in or about November 2020. This is a clear and direct answer to the question requiring it to 'Estimate the date when the material injury from dumped and/or subsidised imports commenced.'

It is disingenuous for Infrabuild to simply seek to alter its view by now suggesting that material injury had been experienced throughout the investigation period. This is a patently self-serving statement that should be given little weight. As per Feng Hsin's submission of 3 February 2022, the available data presented on a year-to-year basis disproves the volume, market share, and profitability injury allegations during the investigation period.

Infrabuild appears to acknowledge that injury if any, occurs at the '*... point that customers use the dumped Taiwanese merchant bar import offer prices during price negotiations to leverage InfraBuild's prices down or risk losing sales volume*'. Feng Hsin reiterates that any price undercutting analysis conducted by the Commission must therefore ensure that prices reflect comparable timing of offers, being Feng Hsin's date of order against Infrabuild's date of sale for import parity price offers.

In addition, the price undercutting analysis used for assessing causal link must be measured using a consistent, consecutive, and extended comparison. This ensures an objective examination and avoids the arbitrary selection of particular transactions which do not reflect the on-going daily price negotiations.

Infrabuild adds that we have '*... sought to portray Merchant Bar as highly complex in terms of the like goods, the market dynamics and the injury caused by the dumped goods where the reality is something quite simple. This investigation concerns a commodity product, there is a single Australian industry applicant and only one verified exporter, and one 'assessed' exporter from a single country.*'

Feng Hsin accepts that merchant bar is a commodity product, and the Australian market is confined to a single local producer and imports predominantly supplied from Taiwan. It is also accepted that the primary features of a commoditised market include substitutability and transparency of product features and prices.

Importantly though, it is undeniable that commodity markets face a greater impact from supply constraints given the degree of market transparency. That is, customers will react quicker to events resulting in supply constraints due to the high degree of substitutability. In the case of merchant bar, the Australian market is well aware of Infrabuild's supply side constraints which

has been well documented.

These have been raised in submissions to the investigation, which include:

- Infrabuild encountered major issues engaging road transportation and inability to deliver to its customers due to COVID 19 lockdowns and State border closures. As a result, lead times increased significantly leading to shortages in the market;
- Infrabuild imposed [redacted] [price impacts], which immediately made their product offering less competitive against imports;
- Infrabuild is understood to be at maximum capacity with regards to production of merchant bar. This is supported by:
  - shortages [redacted] [product offering];
  - sourcing of [redacted] [country] imported merchant bar from [redacted] [supplier],
  - indirectly sourcing of merchant bar imports from [redacted] [country] by [redacted] [supplier], and
  - sourcing of [redacted] [substitutable imported products]

In the case of industry's own imports, the Commission must examine the relative prices of such goods compared to Taiwanese export prices to ensure that injury caused by those imports are not attributed to the subject goods, as required by subsection 269TAE(2A) of the Customs Act 1901, and mandated by Article 3.5 of the WTO Anti-Dumping Agreement. The Commission must also consider whether Infrabuild's decision to source imports from [redacted] supports the prevailing view that it faces production capacity constraints.

In the context of these supply side constraints, it is convenient for Infrabuild to point the blame at imports, when the reality is that customers are forced to seek alternative supply given the tight supply conditions of the local producer.

#### **4. Australian Industry Verification Report**

Feng Hsin has reviewed the Infrabuild verification report and makes the following observations.

- sales volumes increased in the investigation period;
- market share remained steady into the investigation period. Although it is not clear whether this chart properly attributes import by Infrabuild to the Australian industry market share. For example, it is known that Infrabuild sources merchant bar from Japan and indirectly from Taiwan.
- Prices continued to move in line with costs confirming the lack of price suppression. Prices remained steady in the investigation period, consistent with movements in steel

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costs. This confirms that Infrabuild did not suffer price depression during the investigation period.

- Profits and profitability showed an increasing trend over the injury assessment period, with levels remaining steady in the investigation period.

Whilst the report does not include price undercutting analysis, it refers to examples provided by Infrabuild where it claims that it reduced prices to compete with imported goods from Taiwan. Feng Hsin wishes to reinforce its earlier comments on the appropriate method of price comparison for assessing whether price undercutting occurred during the investigation period.

This includes the following:

- prices of subject imports should be compared with Infrabuild's IPP by reference to the importer's sales date to the final customer;
- the price comparison between subject imports and Infrabuild's IPP should be based on industry's ex-works price, versus the ex-Australian port (CIF) price. This point of comparison is necessary to remove the effects of the high transport costs incurred by Infrabuild for delivery from its two production sites (Laverton and Rooty Hill), as it's understood that customers can stagger deliveries in the relevant sale month, whereas the total ordered volume of subject imports are delivered to the customer in a single delivery directly from the port.
- prices of subject imports should not be compared with Infrabuild's ezystock prices as they reflect sales prices made at different times and incorporating different sales functions.

Finally, whilst it is understood that the verification report reflects the verification of Infrabuild's financial position with respect to merchant bar only, it is nonetheless relevant to highlight recent financial reporting. The Australian Financial Review reported<sup>4</sup> that Infrabuild's '*... structural steel business in Australia has more than doubled profits in the December half*'.

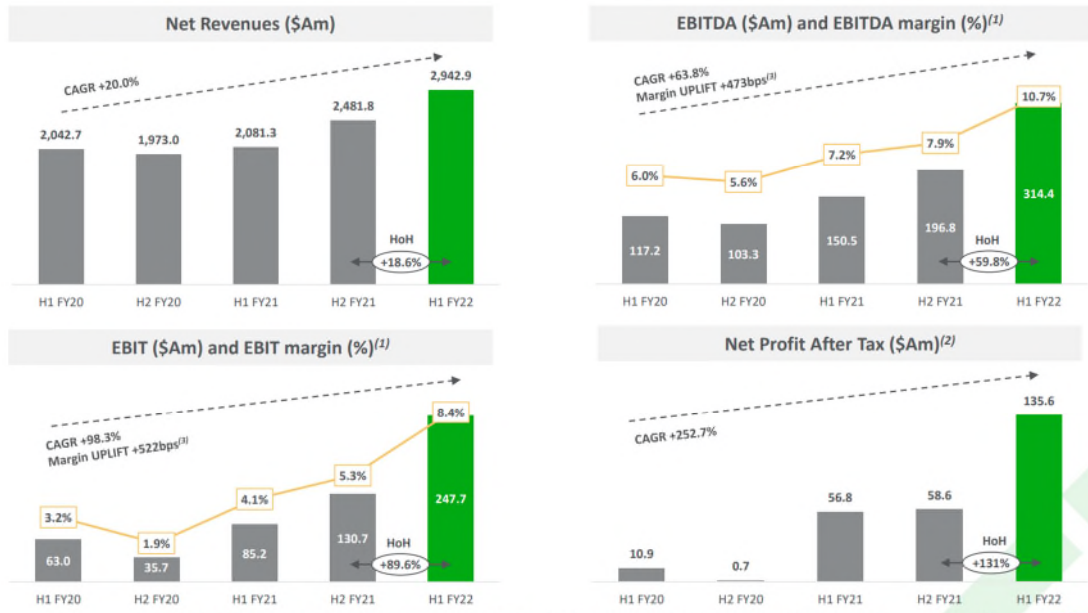
This was confirmed by Infrabuild's financial presentation<sup>5</sup> which shows the clear increasing trend in performance during and since the end of the investigation period. This is further evidence of the flawed 'but-for' argument presented by Infrabuild, aimed at further embedding its monopoly supplier dominance.

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<sup>4</sup> <https://www.afr.com/companies/manufacturing/gupta-s-infrabuild-steel-doubles-profits-in-australia>

<sup>5</sup> [H1-FY22-Investor-Presentation.pdf](#), page 9.

# Fundamentals continue to improve & strengthen



H1 FY22 Financial Results Presentation

(1) EBITDA & EBIT on underlying basis, adjusted to remove significant items. (2) NPAT on statutory basis. Incl significant items & FX impact on HYB. comparing margins at H1 FY20 vs H1 FY22

(3)

