

8 December 2022

The Director, Investigations 3  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

**BY EMAIL:**  
**Investigations3@adcommission.gov.au**

Dear Director,

**Continuation Inquiry No. 601 concerning Steel Reinforcing Bar exported from Greece, the Republic of Indonesia, Spain (by Nervacero S.A), Taiwan (by Power Steel Co. Ltd) and the Kingdom of Thailand**

**AUSTRALIAN INDUSTRY SUBMISSION IN RESPONSE TO SEF 601**

InfraBuild (Newcastle) Pty Ltd (**InfraBuild**), the applicant for the continuation of anti-dumping measures the subject of this inquiry, refers to the *Statement of Essential Facts (SEF)* of the Commissioner of the *Anti-dumping Commission (Commissioner and Commission)* published in this matter (**SEF 601**), and makes this submission in response.

**Continuation of the measures**

The Commissioner's proposed recommendation to the Minister to take steps to secure the continuation of the measures for Greece, Indonesia, Spain (Nervacero<sup>1</sup>) and Taiwan (Power Steel<sup>2</sup>) is the correct decision. To the extent that there were not exports of the goods by any exporter or exporters generally, the Commissioner's proposed recommendation that the variable factors relevant to the dumping duty notice applicable to such exporters remain unaltered is also the correct or preferable decision.

However, the same may not be said in the case of Nervacero (an exporter from Spain) who did export the goods during the inquiry period, and who cooperated with the Commissioner's inquiries. In the case of this exporter, reliable information was obtained that enabled the Commissioner to specify its variable factors. It is InfraBuild's contention that the Commissioner's recommendation concerning the dumping duty notice as it relates to the exporter from Spain, Nervacero, should be consistent with a determination by the Minister under sub-paragraph 269ZH(4)(a)(iii)<sup>3</sup> that the notice continues in force after the specified expiry day but that, after that day, the notice has effect, in relation to Nervacero as if the Minister had fixed different specified variable factors in relation to that exporter, relevant to the determination of duty.

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<sup>1</sup> Nervacero S.A.

<sup>2</sup> Power Steel Co. Ltd

<sup>3</sup> All legislative references in this submission are to the *Customs Act 1901* unless otherwise specified

### Recommendation concerning Millcon<sup>4</sup> and all other exporters from Thailand

InfraBuild contends that the Commissioner's proposed recommendation to the Minister that the continuation of the measures not be secured against this exporter and exporters generally from Thailand is not the correct or preferable decision. The Commissioner's preliminary consideration that dumping would not likely continue or recur for Thailand is based on the following errors:

- in the manner of comparison between the ascertained normal values and export prices for the like goods and goods exported by Millcon;
- in the determination of adjustments to the normal value under subsection 269TAC(8);
- in the analysis of the likelihood of dumping by TSMT<sup>5</sup> and all other exporters from Thailand.

### Variable factors - Nervacero

We observe that the Commissioner under section 6.5 of his SEF concluded:

*In respect of Australian sales of the goods by Nervacero, the commission has determined the export price under section 269TAB(1)(a), being the price paid by the importer to the exporter less transport and other costs arising after exportation.*

Therefore, the Commissioner found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price;
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

In other words, the export sales to Australia during the inquiry period were 'relevant' sales within the meaning and purpose of section 269TAB.

However, the Commission observed that *...Nervacero only exported a small quantity of goods to Australia, and it did not produce these exported goods in 2021. Nervacero produced these goods between 2017 and 2019.*<sup>6</sup> In turn, Nervacero claimed *...that it had exported these goods to Australia to maintain accreditation with ACRS. Nervacero submitted that the Commissioner **should not treat these sales as normal commercial sales of the good.***<sup>7</sup> [emphasis added]

There are several problems with Nervacero's claims with respect to its exports of the goods during the inquiry period. Firstly, maintenance of *...accreditation with ACRS...* does not require the sale of the goods to Australia or New Zealand, or at all. As a participant in the ACRS certification scheme, InfraBuild knows that the annual compliance obligation for certified mills comprises an annual surveillance audit to be performed with a sample of different products within the accredited range, for example, a typical surveillance audit may require, by example only:

- Year 1 – some sizes sampled e.g., 10mm, 16mm.

<sup>4</sup> Millcon Steel Public Company Limited

<sup>5</sup> Tata Steel Manufacturing (Thailand) Public Company Limited

<sup>6</sup> SEF 601, p. 46.

<sup>7</sup> SEF 601, p. 46.

- Year 2 – some sizes sampled e.g., 12mm, 20mm.
- Year 3 – all sizes sampled.

The audit sample size is usually 12 samples of a given diameter in 500mm lengths to be tested on mill equipment; with the auditor observing; and another 12 samples to be provided to the auditor for independent testing.

There is nothing in the ACRS sample and surveillance regime that requires the goods so produced to then be exported. However, what may be concluded from Nervacero's ongoing participation in the certification scheme is:

- Firstly, the fact that Nervacero remained willing to produce rebar to maintain their ACRS certification (despite a lack of customer demand at their undumped prices) indicates their intention to remain active in the Australian market; presumably to respond rapidly to sales opportunities.
- Even if it is accepted that the export sales by Nervacero within the inquiry period arose from stock holdings of production designed to maintain ACRS certification, then the fact that such stock could only be sold at significantly dumped prices (33.5 per cent weighted average rate) reveals Nervacero's inability to compete in the Australian market at undumped prices.
- The rebar produced and sold was 'prime' product to meet the testing requirements and designated 'P' for prime product in Nervacero's disclosure of export models to Australia, as such there is no reason why these export sales should not be treated as regular commercial sales. Nervacero did not need to export them at dumped prices, unless that was the only manner by which it could secure the export sales.

Furthermore, even if it is accepted that Nervacero's export sales within the inquiry period, were *atypical* or *abnormal*; which is not admitted; then there is nevertheless no concept of *...normal commercial sales of the [export] good[s]...* known to Australian anti-dumping law, policy or practice, in the sense submitted by the exporter. It is acknowledged that export sales sold in non-arms length transactions (including an assessment of whether the export price resulted in unprofitable or unrecoverable sales by the importer) may result in the modified treatment of these export sales for the purpose of determining an export price under section 269TAB. And in the case of reviews of measures under Division 5, low or absent volumes of sales, may result in a modified treatment of those sales under subsection 269TAB(2A) for the purpose of determining an export price. The same may not be said for the treatment of export sales, albeit in claimed, low volumes within the context of a continuation inquiry under Division 6A.

Therefore, although the Commissioner was correct to determine the exporter's export price on the basis of the sales exported during the inquiry period, the Commissioner is then wrong to not have regard to this verified, contemporary and entirely relevant ascertained export price, when considering to what extent the dumping duty notice has effect in relation to Nervacero as if the Minister had fixed different specified variable factors. It appears that the Commissioner has justified this preliminary conclusion by creating a new, and previously unknown class of export sales, namely 'relevant sales'.

The Commissioner expressed the concept of 'relevant sales' as follows:

*Relevant sales*

*As stated above, Nervacero claimed that it exported the small volume of goods only for the purpose of maintaining its ACRS accreditation. The commission has no basis to disregard these sales and considers them relevant for determining a preliminary dumping margin. However, the commission considers that this information is not a sufficient basis to recommend that new variable factors be ascertained given the low volume of exports from Nervacero during the inquiry period. The current measures are based on a much larger volume of exports.<sup>8</sup>*

InfraBuild can find no provision within Australian domestic law or policy that supports the Commissioner’s recommendation that a contemporary, but *...low volume of exports...during the inquiry period...* should be ignored when updating the specified variable factors relevant to the determination of duty, in preference for historic and out-of-date (last ascertained for the period, 1 April 2016 to 31 March 2017) ascertained variable factors, albeit an ascertained export price based on *...a much larger volume of exports.*

**Dumping assessment – Millcon**

InfraBuild has several concerns regarding the Commissioner’s approach to comparing Millcon’s ascertained normal values to its ascertained export prices.

**Concern 1: Threaded bar models imported are not reflected in the export models listing**

The Commission’s consideration of model control codes (**MCCs**) exported to Australia and sold domestically by Millcon and their treatment in calculating a normal value under subsection 269TAC(1) was best summarised in *Table 8* to SEF 601, reproduced below.

Export MCC	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-C-S-B-1-N	N	No domestic sales of P-C-S-B-1-N. Surrogate model P-C-S-B-2-N with specification adjustment under section 269TAC(8).
P-C-S-B-2-N	Y	The commission considers that the volume of domestic sales of the same MCC allows for a proper comparison to exported goods.
P-C-S-C-2-N	Y	The commission considers that the volume of domestic sales of the same MCC allows for a proper comparison to exported goods.
P-C-S-C-2-T	N	No domestic sales of P-C-S-C-2-T. Surrogate model P-C-S-C-2-N with specification adjustment under section 269TAC(8).

Table 8 - Surrogate models assessment - Millcon

There are clearly four export MCCs identified for Millcon sales, whether directly to an Australian customer or indirectly via an intermediary. Only one of these is identified as being ‘threaded’ bar i.e., P-C-S-C-2-T; yet the commission’s assessment of importer questionnaire response for International Drilling Equipment (**IDE**) identifies four different threaded bar models:

*IDE imported sold [sic] some goods to its customers with the following MCCs,*

<sup>8</sup> SEF 601, p. 46.

*P-C-S-C-1-T, P-C-S-C-2-T, P-C-S-D-1-T and P-C-S-D-2-T...*

and states further:

*The commission notes that IDE purchased the goods from BBV Systems Co., Ltd (BBV Systems), however the goods were manufactured by Millcon.*

Therefore, InfraBuild is concerned that the additional models manufactured by Millcon and imported by IDE (via the intermediary, BBV) have not been included in Millcon’s export sales and have also not factored into the Commission’s calculation of the variable factors relevant to the determination of the exporter’s dumping margin.

***Concern 2: The Commission has found no domestic sales of threaded bar considered a close match to the export model and has used a non-threaded model as a surrogate for adjustment***

In Table 8 (SEF 601), the Commission notes *...No domestic sales of P-C-S-C-2-T...* and applies a non-threaded model, P-C-S-C-2-N, as a surrogate for specification adjustment. InfraBuild notes that in *Review of Measures No. 518 (REV 518)* the Commission assessed the *...relationship between Millcon’s standards and MCC categories...* as follows<sup>9</sup>:

Standard	MCC minimum yield strength category (item 2)	MCC deformation pattern category (item 6)
500N	C	N
500N Thread Bar	C	T
Barex	D	T
BB Bar	C or D	T
ONE Bar SD50	C	T
SD40	B	N
SD50	C	N
Terex	C	T

**Table 5 - MCC mapping of grades**

InfraBuild submits that domestic sales of any, or all, of the threaded bar models highlighted above are far preferable surrogate models for adjustment compared to the non-threaded bar model selected by the Commission. All of these models are of a comparable minimum yield strength grade designation “C” and all of them are threaded – these physical properties are significant factors affecting pricing (more significant than matching bar diameter or length).

It is difficult to believe that no domestic sales of any of these products have been found by the Commission. Domestic sales of threaded product *...ONE Bar grade SD50...* in particular would be expected to be present in the Thai market and a suitable surrogate for the 500N threaded bar likely exported to Australia. The most recent Annual Report (for 2019) available on Millcon’s website points to the likely price premium for this threaded product given the customer advantage of reduced *...time and cost of construction*. It also references the Thai Standard TIS 24-2548 as this product has been developed specifically for sale into the Thai market:

*In addition, the Group also produces thread deformed bar called One Bar as the latest innovation developed to remove steel joining problem. One Bar is generated through the hot*

<sup>9</sup> REP 518, p. 11.

*rolling process with threading made along the entire length. Steel can splice with coupler because of such thread. This will better strengthen the steel joining than fastening or welding and reduce waste of steel texture during the process. One Bar can be used in substitution for deformed bar in general. However, **it will help save time and cost of construction.** The Group's deformed bar is offered in two quality levels, i.e. SD 40 and SD 50, and compliance with **TIS 24-2548.**<sup>10</sup> [emphasis added]*

During *Dumping Investigation No. 264*, the Commission's verification report for Millcon noted<sup>11</sup>:

*Millcon stated that it sells **Onebar** in grades of SD40 and SD50 **on the domestic market...***

and further,

*It is noted that Millcon also **manufacture high tensile rebar**, which has different end uses, however **an equivalent product was not exported to Australia in the investigation period.** [emphasis added]*

The Commission's verification report for Millcon in REV 518 identified three threaded bar models sold domestically with grade/minimum yield strength category designation "C" (480 to 550MPa)<sup>12</sup>:

*P-C-S-B-2-T,*

*P-C-S-C-2-T, and*

*P-C-S-D-2-T*

Therefore, InfraBuild contends that despite differences in bar diameter, models P-C-S-B-2-T and P – C – S – D – 2 - T would be considered far better surrogates for the export model P-C-S-C-2-T than a non-threaded bar model.

***Concern 3: Inappropriate use of cost comparison when price comparison available for the making of a specification adjustment under subsection 269TAC(8)***

Even if the Commission was correct to not find any domestic sales of threaded bar considered a close match to the export model, then the method of calculating the specification adjustment under subsection 269TAC(8) was incorrect.

In Millcon's *Exporter verification report*, the Commission advised that they calculated the specification adjustment for MCC model, P-C-S-C-2-T as follows:

*The verification team based the specification adjustments for the surrogate MCCs on the **difference in the CTMS, and an OCOT profit, between the export MCCs and their surrogates.***<sup>13</sup> (emphasis added)

<sup>10</sup> Millcon Annual Report 2019 on p38 <https://www.millconsteel.com/en/publications/>

<sup>11</sup> EPR264/062 at p12

<sup>12</sup> EPR518/012 at p6.

<sup>13</sup> EPR 601/023, p. 26.

Given that the Commissioner found that TSMT ...sold domestically... the same MCCs that Millcon exported:

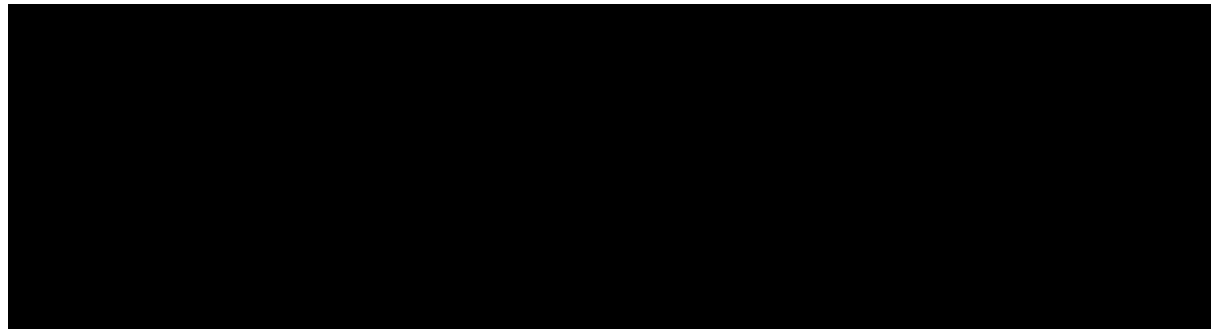
*Millcon is an exporter from the same country and exported goods with the same MCCs that TSMT sold domestically,<sup>14</sup>*

then the correct or preferable approach would be for the Commission to calculate a specification adjustment based on the price comparison between TSMT's domestic sales of MCC model, P – C – S – C – 2 - T, and a model considered a close match to the export model, sold domestically.

**Concern 4: Missing or mis-categorised 'threaded bar' exports**

InfraBuild's understanding of the typical product premiums (when compared to non-threaded rebar) applicable to threaded bar and prestressed threaded bar is best demonstrated by the [REDACTED] data [confidential source] for the period January to May 2021:

*[the following table of data is considered confidential in its entirety]*



It is InfraBuild's understanding that Millcon has historically exported (non-threaded) reinforcing bar [REDACTED]. When exports of threaded bar products commenced in December 2015 (following ACRS certification for grade 500N threaded bar on 6 July 2015), those exports appeared [REDACTED]. The export quantities reflect the difference in types of bar and the price premium is further indicative of the premiums associated with these products.

However, it is now unclear whether all of these exports (for the different HS tariff codes) are included in Millcon's export sales listing or whether they are included (at all) in the Commission's view of Australian Border Force import statistics. Goods description filters may well have excluded some of these goods, InfraBuild notes the BBV letter description of Grade 500N threaded bar as 'soil nails'.<sup>15</sup>

Therefore, InfraBuild is concerned that exports of 'threaded bar' have either been categorised as a non-threaded bar model, or that Millcon's exports of the goods have deliberately or inadvertently been excluded from the Commission's export sales listing for the exporter. Therefore, we request that the Commission review the import data set for completeness and comparison against the data

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<sup>14</sup> SEF 601, p. 70.

<sup>15</sup> EPR601/011 at p1.

set that constitutes the export sales listing for Millcon. We note that inadvertent filters based on free-text descriptions may have resulted in certain rebar goods being excluded.

### Dumping assessment - Thailand – All other exporters

The Commissioner preliminarily concluded that *...the evidence does not support that dumping is likely to continue or recur for all exporters from Thailand.*<sup>16</sup> It appears that this conclusion was strongly influenced by a comparison of TSMT's normal value to Millcon's export price:

*To assess whether TSMT would likely have dumped during the inquiry period had it exported, the commission **compared TSMT's normal value to Millcon's export price.** Millcon is an exporter from the same country and **exported goods with the same MCCs that TSMT sold domestically.** The commission considers that **Millcon's export price may indicate a price at which TSMT could export the goods to Australia.** Based on the commission's comparison, it is unlikely that TSMT would have dumped the goods in the inquiry period. On this basis, the commission does not consider that TSMT would likely export at dumped prices if the measures expire.<sup>17</sup> [emphasis added]*

We observe that the Commissioner's analysis refers to *...TSMT's normal value...* and *...Millcon's export price...*, both in the singular sense. Given that Millcon exported several different models of the goods, and by extension, TSMT produced and sold domestically several different models, we are concerned that the comparison between TSMT and Millcon was based on a singled ascertained normal value (for TSMT) and ascertained export price (for Millcon). This is not a reasonable or sound assumption, in key part because, TSMT's predecessors (Tata Steel SCSC and Tata Steel (Thailand) – NTS) did not export the same models of goods to Australia as Millcon did during the inquiry period, in particular various models of the higher value, 'threaded bar'. This assertion is made on the basis of the previous ACRS certification of Tata Steel SCSC and Tata Steel (Thailand) – NTS, which did not include accreditation for a threaded bar model of the goods, unlike Millcon.

Therefore, unless the Commissioner performs a model by model (MCC) comparison of TSMT's normal values to Millcon's export prices, then it is not possible for any meaningful conclusion to be reached concerning TSMT's; and by extension; all other exporters from Thailand's likelihood of recurrence of exporting at dumped prices if the measures expire.

### Conclusions

InfraBuild submits that the Commissioner's recommendations in SEF 601 proposed to the Minister are correct, except for:

- conclusion that the variable factors in relation to Nervacero not be altered in the dumping duty notice; and
- the recommendation that the measures not be continued against exports from Thailand by Millcon or any other exporter.

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

<sup>16</sup> SEF 601, p. 70.

<sup>17</sup> SEF 601, p. 70.



FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT