

5 May 2022

The Director
Investigations 2
Anti-Dumping Commission

BY EMAIL: investigations2@adcommission.gov.au

Dear Director,

Continuation Inquiry No. 601 concerning Steel Reinforcing Bar exported from Greece, Indonesia, Spain, Taiwan, Thailand.

AUSTRALIAN INDUSTRY SUBMISSION CONCERNING EXPORTER INFORMATION SOUGHT TO BE VERIFIED BY THE COMMISSION

InfraBuild NSW Pty Ltd (**InfraBuild**), the Australian industry applicant in this matter, seeks to provide input to the composition of the Commission's recently issued *Exporter Questionnaire* in this continuation inquiry. We make this submission to assist the Commission ensure that it is best placed to have obtained and verified as much relevant information to this inquiry possible at the earliest opportunity.

Under subsection 269ZHF(2) of the *Customs Act*, the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping (and/or subsidisation) and the material injury that the anti-dumping measures are intended to prevent. The Commission considers 'likely' to mean 'more probable than not'.¹

In assessing the likelihood of continuing or recurring dumping, the Commission's manual sets out that the inquiry may gather facts as relevant on, but not limited to:

- *pattern of exports since the measures were imposed*
- *volumes and values of the imported goods*
- *effectiveness of the measures*

¹ *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)* [2009] FCA 838 at [49]

- *whether exports are likely to continue or resume (such as volume of exports before and after measures were imposed, exporters' production capacity, exporters' supply chains, exporters' other markets, third country sales, and the world market for the goods)*
- *whether dumping will resume (such as exporters' margins, volume of exports before and after the measures were imposed, effect of the measures, the level of dumping compared with the level of measures i.e. NIP, any changes in the level of the measures as a result of review)*
- *exchange rate fluctuations*
- *changes in technology*
- *exporters' historic margins*
- *exporters' historic volume and value of exports*
- *duty absorption by the exporters (or other means of circumventing measures)*
- *exporters' volumes and values to third countries*
- *normal values in the exporting country*
- *export trends after the measures were imposed*
- *changes in distribution channels*
- *changes in transport costs*
- *demand in exporters' home markets*
- *evidence of sales below costs*
- *high dumping margins*
- *high tariffs in the exporting country*
- *exporters' dependence on export markets*
- *world capacity*
- *other possible sources of supply by importers*
- *end user preferences*
- *exporters' domestic profit on sales of like goods*
- *availability of other markets.*²

The primary manner in which the Commission sets about gathering facts to determine whether the exporter is likely to continue or recommence dumping is through the *Exporter Questionnaire* process; including any verification thereto, and any subsequent submissions by interested parties.

At the outset we observe that although many of the considerations required by the Commission for an anti-dumping investigation are markedly different to a continuation inquiry, the Commission nevertheless uses essentially the same form of questionnaire for both an initial investigation and a continuation inquiry.

² Anti-dumping Commission, *Dumping and Subsidy Manual*, December 2021 edn, Australian Government, Canberra, pp. 137 – 138.

InfraBuild's concern with this approach is that the form of *Exporter Questionnaire* applied in an initial anti-dumping investigation is specifically designed to determine if the exporter was dumping during a 12-month period in which there were no measures. On the other hand, a continuation inquiry ought properly to consider the effect of the measures across a much longer period, and address the question of likelihood of continuation or recurrence of dumping and injury. Specifically, the *Dumping and Subsidy Manual* provides some guidance of the nature of inquiries to be performed:

*such as volume of exports before and after measures were imposed, exporters' production capacity, exporters' supply chains, exporters' other markets, third country sales, and the world market for the goods*³

A finding that an exporter was not dumping during a continuation inquiry period in itself is unremarkable as exporters are aware years ahead (within a month or two) of the impending 12-month period to form the basis for the dumping margin to be again determined.

For this reason, InfraBuild respectfully requests that the Commission verify additional information from the exporters including:

- monthly sales and volume data before and after the measures were imposed for exporter domestic sales, export sales to Australia, sales to third countries
- Yearly changes in capacity utilisation before and after the measures were imposed.

We see nothing in this additional information which would not be capable of being indexed in public record versions of responses and reports that would assist interested parties and the Commission make better informed submissions and final recommendations, respectively.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

³ *Dumping and Subsidy Manual*, p. 137.