

21 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 RESPONSE TO NERVACERO S.A SUBMISSION

InfraBuild (Newcastle) Pty Ltd (**InfraBuild**), the applicant for continuation of anti-dumping measures the subject of this inquiry, refers to the recent submission¹ of Spanish exporter Nervacero S.A (**Nervacero**) in response to the *Statement of Essential Facts (SEF)* of the *Commissioner of the Anti-dumping Commission (Commissioner and Commission)* published in this matter (**SEF 601**).

Nervacero makes a number of claims and assertions which are factually incorrect, misconceived and warrant clarification.

Claimed "...[c]hanged market and operational conditions support expiry"

Nervacero states that their exports to Australia diminished after 2018 and acknowledges that *...of course the imposition of the measure...²* was a factor in their reduced exports. The exporter then cites a number of other *...key reasons...* for the decline in its exports. InfraBuild comments on each of these in turn, the numbers referenced follow those in Nervacero's submission:

"1. Cessation of Nervacero sales to the Australian industry itself..."

Nervacero is part of the Celsa Group with rebar manufacturing operations in Spain (Nervacero and Celsa Barcelona), Norway, France, United Kingdom and Poland. While Nervacero's exports to Australia may have reduced since the imposition of measures in 2018, the Celsa Group has continued exporting significant volumes of rebar to Australia via their well-established distribution

¹ EPR 601/027 (12 December 2022).

² EPR 601/027, p. 3.

network, such that patterns of export trade flow to those mills not subject to Australian anti-dumping measures. For example, Nervacero's related Polish entity, Celsa Huta Ostrowiec (**Celsa Huta**), attained ACRS certification in January 2018 and exports from Poland commenced shortly afterwards - coinciding with a reduction in rebar exports from Spain. Nervacero makes no reference of their connection to the Polish Celsa Group entity when stating *...to Nervacero's knowledge, the only sources of exports from the EU region are Poland and Italy.* During Continuation Inquiry No. 546; the inquiry related to the dumping duty notice applicable to Nervacero's related Spanish company, known as CELSA Barcelona; the Commission tested InfraBuild's claim that the Celsa Group's supply capacity had expanded with the ACRS certification of the Celsa Group's mill in Poland. In that inquiry, the Commissioner reached the following conclusions:

*The Commission has analysed ABF data and observes that the pattern of export sources from the CELSA Group supports InfraBuild's claim. While exports of the goods to Australia from Poland are not subject to this inquiry, **the Commission finds it a relevant consideration that the CELSA Group is able to switch its supply source.** As both CELSA and Nervacero remain ACRS accredited mills (discussed further in section 7.4.5) that have supplied the Australian market prior to 2019, **the Commission considers there to be a reasonable likelihood that volumes will again be supplied from CELSA in the absence of measures**³ [emphasis added]*

and further:

The examination of exports to Australia following the imposition of measures also contradicts CELSA's claim that the establishment of a supply channel through CELSA Poland makes it unnecessary for CELSA Barcelona to re-enter the Australian market. The Commission found that exports from CELSA Barcelona have re-entered the market in 2020. As stated above, the volumes were not insignificant.

The Commission accepts that CELSA maintains its ACRS accreditation in order to supply customers that require products that meet the Australian and New Zealand standard. The Commission observes that it is unlikely to maintain this accreditation if it does not plan to supply this market."⁴

³ REP 546, p. 58.

⁴ REP 546, p. 79.

Applied here, the Commission's assessment in *Continuation Inquiry No. 546* remains equally relevant to a consideration of Nervacero's likely future exports to Australia in the absence of measures. The Celsa Group has clearly demonstrated a propensity to switch supply source when dumping duties curtail their ability to supply at undumped prices to Australia.

Furthermore, InfraBuild notes that all three Celsa Group entities that are known to have exported rebar to Australia continue to pay the surveillance audit fees and provide the samples necessary to meet the testing requirements to retain ACRS certification.

"2. *Strong demand and profitable steel prices for rebar in both Spanish and European markets, and the overall lack of domestic capacity in Europe...*"

This view is contradicted by numerous, contemporary leading steel industry publications, and other anti-dumping authorities, such as the Canada Border Services Agency (**CBSA**).

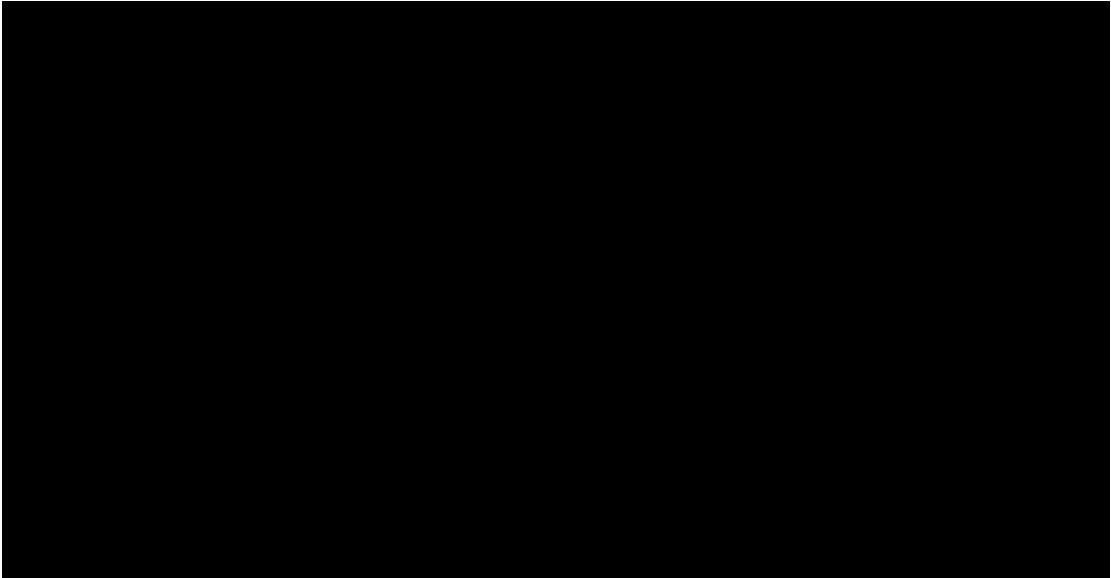
Firstly, InfraBuild is able to cite at least three, current, leading steel industry publications that demonstrate weakening steel demand and declining *...steel prices for rebar in both Spanish and European markets...* all within the universally accepted backdrop of rising input energy prices and inflationary conditions.

According to [REDACTED] [steel industry subscription service], the *Medium Term Price Forecasts* for European steel prices are:

...the start of a new year [2023] is likely to encourage suppliers to make concerted efforts to improve their financial positions, to avoid commencing the period in the red. Production costs are rising for all the main steelmaking inputs – iron ore, coking coal, ferrous scrap, gas, electricity and carbon.

*The mills are expected to carry out extended maintenance stoppages over the Christmas/New Year holidays, to balance supply and demand. Moreover, a degree of restocking by distributors and end-users is anticipated. **As a consequence of weakening economic fundamentals, the price upturn is forecast to be shortlived, and negative pressure is expected to develop during the spring.***⁵ (emphasis added)

⁵ CONFIDENTIAL ATTACHMENT 1, p. 8.



CONFIDENTIAL FIGURE 1: *Europe Steel Price Forecast, Transaction Values, €/metric ton, Flat products and Long products* (Source: CONFIDENTIAL ATTACHMENT 2, p. 8)

According to [redacted] [steel industry subscription service], in October 2022:

Prices for Spanish rebar continue to decrease in the domestic and external markets. Sluggish demand remains the main reason for the price drop.

...

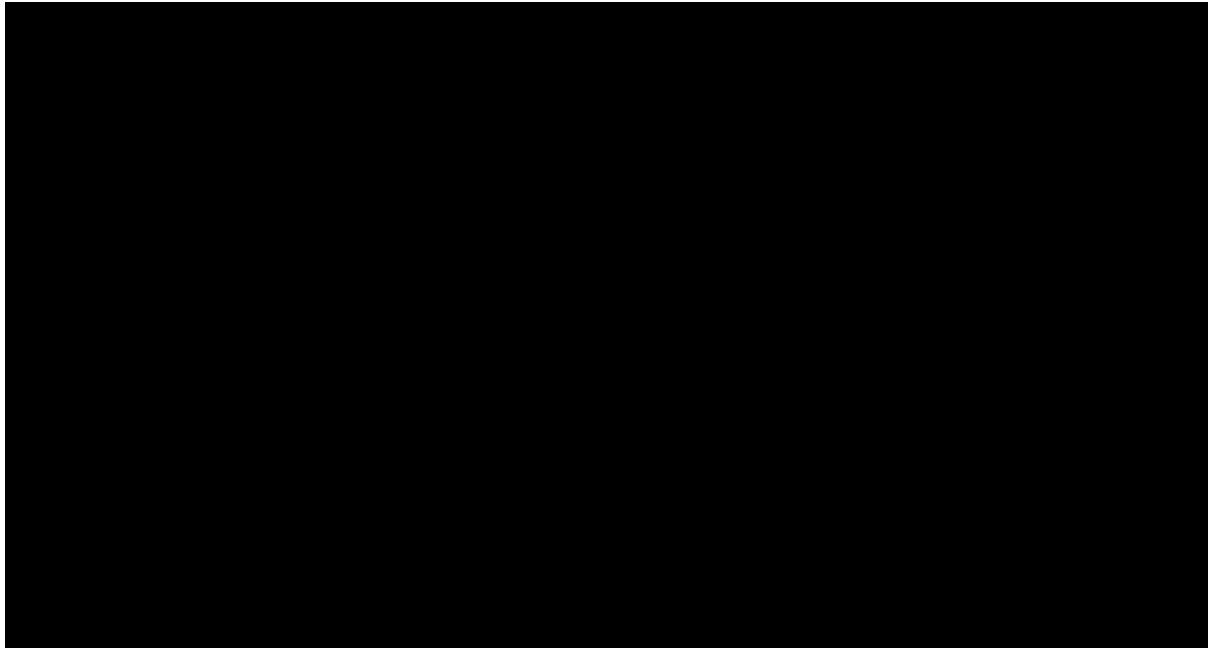
“Everybody [in Europe] is talking about the possibility of recession and increase of [interest] rates, so it seems that private initiative is almost dead. Those countries who have infrastructure projects are confident that they will continue to have reasonable or even good demand in the next few months, but those markets that do not have any kind of infrastructure projects are very flat now,” a local source told [redacted] [steel industry subscription service].⁶

“Europe continues to face heavily depressed demand due to costs spike” headlines [redacted]’s [steel industry subscription service] [redacted]: 2022 Q4 Edition report, specifically in the case of the rebar market in Spain ...[w]hile costs rise, the lack of orders is forcing mills to lower their prices, by the following market operation:

⁶ CONFIDENTIAL ATTACHMENT 2.

Prices have continued to fall over the past months as producers find themselves unable to fill their orderbooks at the current price levels.⁷

This contemporary market operation in Spain and key domestic European markets has been presented graphically:



CONFIDENTIAL FIGURE 2: Delivered rebar prices in selected countries [Germany, Italy, Spain and Turkey], EUR/t (Source: CONFIDENTIAL ATTACHMENT 3, p. 7)

Secondly, InfraBuild refers to the Statement of Reasons of the CBSA's *Expiry Review* published 9 September 2022 outlining that authority's decision to continue anti-dumping measures relating to rebar exported from a number of countries, including Spain⁸:

*Based on the evidence on the record in respect of: the commodity nature of rebar; excess global production capacity and weakening global demand for rebar; weakening economic growth and a declining construction sector in Spain; Spain's significant excess rebar production capacity; the export orientation of Spanish rebar producers; the restricted access to export markets due to trade restrictions imposed by other countries; the anti-dumping measures in other countries against rebar that demonstrate that **rebar exporters in Spain have a propensity to dump into export markets; and the inability of rebar exporters in Spain to compete in Canada at non-***

⁷ CONFIDENTIAL ATTACHMENT 3, p. 7.

⁸ NON-CONFIDENTIAL ATTACHMENT 4, p. 37 at [162].

dumped prices, the CBSA determined that the expiry of the finding is likely to result in the continuation or resumption of dumping into Canada of rebar from Spain.⁹ (emphasis added)

“3. Relatively higher costs of production and higher logistics cost for Nervacero as a producer from Spain, in comparison to other suppliers for the Australian market, with lower costs of production and freight.”

As highlighted earlier, the higher costs of production and higher logistics costs that Nervacero mentions do not appear to have inhibited the supply of rebar from the Celsa Group entity based in Poland who has continued to export to Australia in the absence of measures that apply to Spanish entity Nervacero (and Celsa Barcelona).

With respect to the freight costs that have been problematic for exporters in all regions, including Asia, in recent times, the latest global container freight price¹⁰ indicates a rapidly falling trend towards pre-pandemic levels.



FIGURE 3: Freightos Baltic Index (FBX), Global Container Freight Index

“4. Higher costs of production, higher prices and continued high demand in the EU zone – market and industry disruptions are likely to continue, including for Nervacero, due to continued inflationary pressures and the energy crises associated with the EU’s stance towards Russia’s invasion of Ukraine, and the effect of the war in the region more broadly.”

Nervacero appears to suggest that they are alone in experiencing these higher costs of production. They are but one producer in a global steel industry consisting of many producers who are all under

⁹ NON-CONFIDENTIAL ATTACHMENT 4, p. 37 at [162].

¹⁰ <https://fbx.freightos.com/> (accessed 19 December 2022)

similar pressure from rising production costs, energy costs, costs of decarbonisation and the far-reaching impacts of Western hemisphere sanctions against the Russian Federation. Rebar is a commodity product that is produced through production facilities that require reasonable utilisation to remain cost efficient. In the absence of demand in a given region, mills will look for every opportunity to export excess production to the most attractive destination, likely at a dumped price, rather than curtail their production. Nervacero is no different. Absent measures on rebar exports to Australia, it is highly likely that when Spanish domestic market conditions deteriorate Nervacero will again commence exports of rebar to Australia at dumped prices knowing an extensive injury period and causality will again need to be proven by the Australian industry to seek the imposition of new measures.

However, as a Spanish exporter it appears that the impact of high energy costs may have been lessened for Nervacero via the *European Energy Support Scheme* details as it was applied to Spain.

For Spain and Portugal, a €8.4bn aid package was approved by the European Commission on 8 June 2022 and will remain in force until 31 May 2023. The Scheme's intention is to lower production costs of fossil fuel powered stations. Electricity producers are paid a daily direct grant to finance their fuel costs. This is calculated by the difference between market gas prices and the gas price cap. In the first six months of the programme, the price cap is set at €40 /MWh. Thereafter, the price cap will increase by €5/month.¹¹

Further, in October 2022 the Spanish Government approved the *More Energy Security Plan to protect consumers and reduce gas consumption*. The Council of Ministers provided the following briefing concerning the Plan:

The +SE Plan includes an analysis of the energy situation in Spain and the EU. Unlike other European countries, Spain is not dependent on Russian energy imports, but has a guaranteed supply and is in fact exporting electricity and natural gas, mainly to Portugal and France.¹²

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3550 (accessed 19 December 2022).

¹²

https://www.lamoncloa.gob.es/lang/en/gobierno/councilministers/Paginas/2022/20221011_council.aspx (accessed 19 December 2022)

And yet despite these prevailing dire micro and macro economic conditions, Nervacero claims that its *...rebar production was operating at near full capacity during the inquiry period.*¹³ However, on the other hand the Canadian authorities concluded a very different capacity situation for Spanish rebar producers (including Nervacero):

*During 2020 and 2021, rebar producers in Spain had large amounts of excess production capacity available and were export-oriented. The limited amount of imports of subject goods during the POR, and the application of anti-dumping duty to the importations that did occur, both indicate an inability for rebar exporters in Spain to compete in Canada without dumping. Given the commodity nature of rebar, if the finding were allowed to expire, exporters of rebar in Spain would be compelled to offer low-priced rebar competitive with other import sources. This would increase the likelihood of continued or resumed dumping in the absence of the finding.*¹⁴

It appears that the exporter's narrative concerning *...the higher price level of rebar in Europe, especially in recent periods...*¹⁵ is constructed around abridged datasets. A good example of this is contained in *Figure 15* to the exporter's submission.¹⁶ The chart terminates its presentation of *...higher price level[s]... in recent periods...* at January 2022, and ignores the precipitous decline in prices since then. To address the misleading nature of the exporter's contention, InfraBuild presents a more contemporary chart of prices and points to the decline in price levels in Europe since January 2022.

¹³ EPR 601/027, p. 3.

¹⁴ NON-CONFIDENTIAL ATTACHMENT 4, p. 37 at [161].

¹⁵ EPR 601/027, p. 7.

¹⁶ EPR 601/027, p. 8.

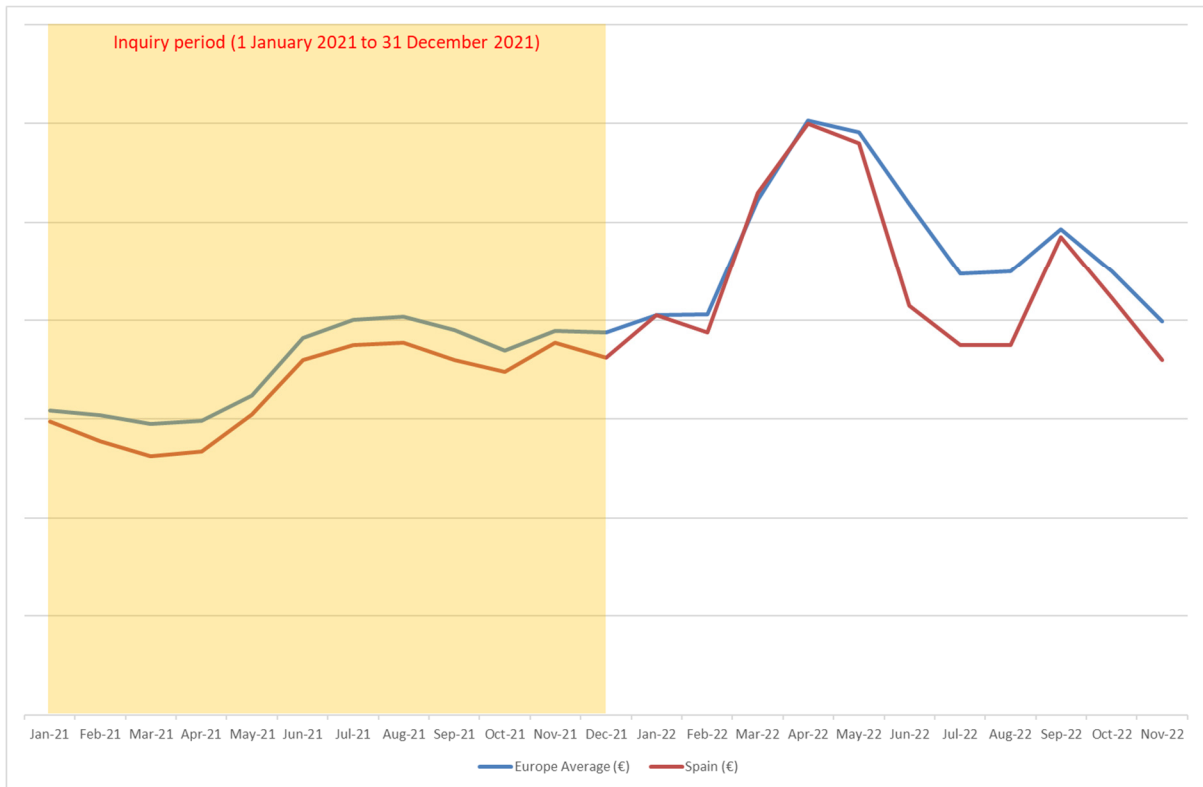


FIGURE 4: Steel reinforcing bar, domestic sales prices, average Europe and Spain (€/tonne) (Source: CONFIDENTIAL ATTACHMENT 5)

Therefore, *Figure 4* indicates that lower sales prices have begun to prevail across European domestic markets for rebar since their heights in April 2022. In terms of the impact of current prices on the combination form of measures currently in place we observe that the domestic sales prices in Spain in November 2022 (€████/tonne) remains above the average domestic sales price in Spain across the inquiry period (€████/tonne), a proxy for the ascertained normal value.

Claimed “...Changes of market and operational conditions for Infrabuild”

“...Nervacero has limited understanding of the operation of Infrabuild – because Nervacero has never been a direct competitor with Infrabuild since its creation”¹⁷

This statement is untrue, throughout the various name changes that the Australian rebar producer has undergone (OneSteel, Arrium, InfraBuild), the Celsa Group of rebar producers and exporters have maintained a constant competitive presence in the Australian rebar market since ACRS

¹⁷ EPR 601/027, p. 15.

accreditation was first attained by Nervacero in November 2009. The Celsa Group currently chooses to supply the Australian market via the Polish mill, Celsa Huta.

“Clearly, this scheme has allowed InfraBuild to significantly improve its sales and revenue performances and a significant impact on the competition dynamics in the Australian market. InfraBuild dominates the steel long products market in Australia. Its market power is an unmissable feature of that dominance. The differentiated net price outcomes of its Advantage Program “lock in” that dominance.In our view, the Advantage Program insulates InfraBuild against price competition from small higher cost/higher price exporters such as Nervacero.”¹⁸

Firstly, contrary to Nervacero’s claims, InfraBuild does not dominate the rebar market in Australia. The Commission has verified the vigorous and persistent competition InfraBuild experiences from substantial volumes of imported rebar, both European and Asian.

Further, any suggestion by Nervacero that InfraBuild’s *Advantage Program* market offer has somehow altered the competition dynamics in the Australian rebar market and somehow holds customers captive, is not true and in particular, the reference to the ACCC’s Customer Loyalty Schemes Report is misconceived. That report was essentially concerned with the consumer loyalty schemes in industries such as airline, supermarket, credit card, hotel and car rental industries. It is of little or no relevance to a manufacturer’s volume based pricing. Instead, the program offers a transparent means of sharing with our customers the value associated with ongoing, known and stable volume commitments and the operational efficiencies it provides to a capital and labour intensive manufacturer such as ourselves. The program does not “lock-in” customers or prevent them from purchasing rebar from other suppliers. Rather, the program is flexible and under the program customers are free to participate to the extent that suits their requirements.

Finally, the Advantage Program does not “insulate *InfraBuild against price competition*”. Rather, the Advantage Program assists InfraBuild to compete in the face of substantial volumes of imported rebar by providing a transparent pricing structure for program customers which reflects import price competition. By their own assertion, Nervacero is a “higher cost/higher price exporter” which experiences significantly high freight costs due to its location. It has shown that it is not able to compete against other domestic or import sources in the Australian market at an undumped price due to its own location and high price of manufacture yet are seeking to have measures discontinued. It is these operating conditions that form the basis for why the Canadian authority did

¹⁸ EPR 601/027, p. 16.

not discontinue the measures during their recently concluded expiry review in so far as it related to exporters from Spain, generally, and Nervacero, specifically.

Conclusions

The purpose of this response is to address the misconceived claims made by Nervacero.

One way or another, the group of companies to which Nervacero belongs (Celsa Group), has continued to maintain its channel to the Australian rebar market. This has typically been via a source either the subject of the lowest anti-dumping measure, or not subject to measures at all. Currently, the Celsa Group maintains its presence in the Australian market via Celsa Huta.

Nervacero has carefully curated time series data that ceases at the point at which all indications are of weakening Spanish and European domestic sales and price conditions for rebar. The suggestion that domestic conditions are so buoyant and profitable that there is no incentive for Nervacero to resume exporting rebar to Australia in the absence of measures is not supported by the most contemporary evidence. This view was also shared by the Canadian authority in its recently concluded expiry review concerning rebar exported, in relevant part, by Nervacero.

Similarly, Nervacero selectively presents freight cost data at the height of its price cycle, and asserts that this logistical barrier precludes it from exporting to the Australian market. However, the exporter neglects to point to contemporary evidence of a decline in freight costs to levels comparable to the inquiry period. Furthermore, increased input energy and material costs are not unique to Nervacero, and apply to steelmakers and rollers, globally.

Finally, Nervacero's characterisation of InfraBuild's Advantage Program as a "loyalty scheme" with the effect of "locking-in" our customers is misconceived and misinformed of the realities of the program.

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT