

29 September 2020

Ms Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel

BY EMAIL: ADRP@industry.gov.au

Dear Panel Member,

***Submission of the Australian industry, InfraBuild Steel
Re.: ADRP Review No. 2020/127 - Review of a decision by the Minister in respect of steel reinforcing bar
exported from the Kingdom of Thailand (Thailand)***

InfraBuild (Newcastle) Pty Ltd (**InfraBuild Steel**)¹; previously known as *Liberty Onesteel (Newcastle) Pty Ltd*; is a member of the Australian industry producing like goods to the goods the subject of this review of anti-dumping measures under Division 5 of the *Customs Act 1901*².

In this submission, InfraBuild Steel responds to matters raised by the exporter, Millcon Steel Public Company Limited (**Millcon**), in their application for Review of a Ministerial Decision³ on the following ground:

The Minister made incorrect assessments and determinations with respect to Millcon's exports, pursuant to subsection 269TAB(2A) of the Customs Act⁴. [Referred to as both 'Ground 1' and 'Ground 2' in Millcon's application]

Millcon contends that the determination of Millcon as a 'low volume exporter' for ascertaining their export price was based on a flawed assessment by the Anti-dumping Commission (**Commission**) of each of the three factors outlined in subsection 269TAB(2A)(b) for consideration:

... the price may, despite subsection (1), be determined by the Minister in accordance with subsection (2B) if:

(b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia by that exporter having regard to the following:

- (i) previous volumes of exports of those goods to Australia by that exporter;*
- (ii) patterns of trade for like goods;*

¹ https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx?_adf.ctrl-state=15i3umbk6d_4 (accessed on 22/09/2020)

² All legislative references in this submission are to the Customs Act 1901, unless otherwise specified.

³ ADRP Review 120/127 – Application: Millcon

⁴ ADRP Notice of Intention to Conduct a Review 2020/127

(iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

InfraBuild Steel responds to each of Millcon's claims of errors made by the Commission, as follows:

(i) Previous volumes of exports of those goods to Australia by that exporter

Millcon's initial critique of the Commission's assessment of its low export volumes contains an acknowledgement that the Commission is correct:

*'In REP 518, the Commission notes that Millcon's '...average quarterly export volume in the review period was significantly less than historical average quarterly export volumes'. **Whilst this may be correct,...**' [emphasis added]*

Ignoring the requirement for the Commission to consider previous export volumes by that exporter, Millcon attempts to impose an obligation on the Commission that is not consistent with the legislation and argues:

'Millcon's volumes are not considered low relative to imports from other exporters subject to measures.' [emphasis added]

Millcon is erroneously asking the Commission to extend the assessment of 'previous volumes of exports of those goods' beyond 'that exporter' to include an assessment of a range of other exporters of the goods to Australia. The language of *subsection 269TAB(2A)(b)(i) of the Customs Act* is very clear, consideration is limited to previous export volumes by that exporter.

Millcon's contention that the Commission has erred in their assessment of the first point for consideration in low volume exports determination is supported by neither fact, nor legislation.

(ii) patterns of trade for like goods;

Millcon contends that

'its pattern of trade to Australia is consistent with the trend from exporters subject to measures, which has been substantially impacted by export volumes from Turkey, which are not subject to any measures. As such, the Commission ought to have given weight to these facts and determined that Millcon is not a low volume exporter as defined, and recommended that subsection 269TAB(2B) of the Act should not be applied'⁵.

The Commission has clearly performed a detailed assessment of patterns of trade for like goods during the review period:

*The Commission reviewed the ABF data and found Millcon's claims that undumped imports from Turkey had replaced Thai imports to be unsubstantiated.*⁶

And further,

⁵ ADRP Review 120/127 – Application: Millcon at p11

⁶ REP 518 at p19

the sharp decline in export volumes by Millcon was not consistent with any pattern of trade for like goods generally, as export volumes from countries not under investigation ebbed and flowed during both the investigation and review period⁷

The Commission has concluded that the decline in Millcon's export volumes was 'likely the result of the imposition of anti-dumping measures which increased the effective price of Millcon's goods in Australia by at least 9.3%'⁸ following the conclusion of Anti-dumping Investigation 418 in March 2018. [emphasis added]

(iii) *factors affecting patterns of trade for like goods that are not within the control of the exporter*

Millcon's representative stated:

As Millcon cannot control the pricing of its competitors from other countries, the pricing behaviour of other exporters and price sensitivity and interchangeability of sources of supply prevented Millcon from achieving greater export sales to Australia⁹.

The argument that dumping duties imposed on Millcon which rendered them unable to secure traditional sales volumes in the Australian market at undumped prices are a 'factor beyond their control' has previously been advanced and considered by the Panel Member in ADRP Report 83. As the Commission explains:

*The Commission notes that a similar finding was made in ADRP Review 2018/83 in which the applicants pointed to the fact that the proportion of goods imported from China had declined and the volume of goods manufactured in Australia and imported from alternative countries of supply had increased. The applicants contended that these factors affected the patterns of trade for like goods and were beyond their control. ADRP Report No. 83 stated that the decline in exports from China and increase in exports from alternative sources 'was likely the result of the imposition of anti-dumping measures on exports of the goods from China' and that **'the imposition of dumping duties is not a matter which is relevantly beyond the control of the applicants.'**¹⁰ [emphasis added]*

The representative for Millcon led, unsuccessfully, a similar argument in ADRP Review No. 84¹¹, but in that case arguing price competition from the Chinese exporters subject to *Reviews 411, 412 and 423*:

Such exporters were undercutting the Applicants and it was this undercutting, by those exporters not subject to measures, which was preventing the Applicants from reentering the Australian market and, as such, the pricing decisions of those other exporters ought to have

⁷ SEF 518 at p15

⁸ REP 518 at p19

⁹ ADRP Review 120/127 – Application: Millcon at p12

¹⁰ REP 518 at p19

¹¹ Steel Reinforcing Bar exported from the People's Republic of China

been treated by the Commission as a factor beyond the control of the Applicants.¹² (emphasis added)

In dismissing this argument, Panel Member O'Connor, noted:

In conference with Commission representatives on 19 June 2018 they stated,

“consideration ought to be given to the purpose of the legislation, in that if the imposition of measures was considered to be an external factor there would never be a circumstance in which the legislative amendments would be able to operate.”

[original fn 14]

I agree with the Commission on this point.¹³ (emphasis added)

Summary:

The exercise of the Minister's discretion under subsection 269TAB(2A) clearly involves an assessment of whether the information available is “insufficient or unreliable” for export price determination. The Commission has undertaken the necessary assessment in analysing previous export volumes by the exporter, patterns of trade for like goods and considering evidence of any export interruptions affecting supply to Australia by the exporter. Based on this analysis, the Commission has rightly concluded that there is insufficient or unreliable information to ascertain the export price due to an absence or low volume of exports of the goods to Australia by Millcon and has determined the export price under section 269TAB(2B)(a).

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

FOR AND ON BEHALF OF

THE AUSTRALIAN INDUSTRY PRODUCER

¹² ADRP Report No. 84, p. 22.

¹³ ADRP Report No. 84, pp. 23 - 24.