Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 19 February 2020 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application to the ADRP for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name:	**Compañía Española de Laminación, S.L. ("Celsa Barcelona").**
Address:	**c/ Ferralla, 12, 98755 Castellbisbal, Barcelona Spain**
Type of entity (trade union, corporation, government etc.):	**Celsa Barcelona is a private corporation.**

2. Contact person for applicant

Full name:	**Charles Zhan**
Position:	**Partner**
Email address:	**Charles.zhan@moulislegal.com**
Telephone number:	**+61 2 6163 1000**

3. Set out the basis on which the applicant considers it is an interested party:

Pursuant to Section 269ZZC of the *Customs Act 1901* ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision.

The reviewable decision in this case relates to an application made to the Commission under 269ZHG(1) requesting that the Minister secure the continuation of anti-dumping measures that apply to Celsa Barcelona's exportation of steel reinforcing bar exported from Spain.

Under Section 269T of the Act an "interested party" for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

Celsa Barcelona is a manufacturer of the goods to which the decision relates, namely steel reinforcing bar which was exported to Australia from Spain during the original investigation and in the inquiry period in the continuation inquiry undertaken by the Commission. Celsa Barcelona is thus an "interested party" for the purposes of the Act and this application.

4. Is the applicant represented?

Yes ☒ **No** ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods subject of the reviewable decision, as described in Final Report 546 are:

Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process. The goods include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.

The goods subject to the anti-dumping measures do not include:

- ***plain round bar;***
- ***stainless steel; and***
- ***reinforcing mesh.***

The following categories of rebar are excluded from the goods:

- ***hot-rolled steel reinforcing bar with a continuous thread, commonly identified as 'threadbar' or 'threaded-bar', in straight lengths, complying with Australian/New Zealand Standard AS/NZS4671, grade 500N, with a 40 mm diameter; and***
- ***fully threaded hot-rolled prestressing steel reinforcing bar, in straight lengths, with a minimum yield strength of 885 MPa or greater, with a 26.5mm, 32mm, 36mm, 40mm or 50mm diameter.***

7. Provide the tariff classifications/statistical codes of the imported goods:

The goods are classified as follows:

The goods are generally, but not exclusively, classified to the following tariff subheadings of Schedule 3 to the Customs Tariff Act 1995:

Tariff Subheading	Statistical Code	Description

7213	**BARS AND RODS, HOT-ROLLED, IN IRREGULARLY WOUND COILS, OF IRON OR NON-ALLOY STEEL**	
7213.10.00	**42**	**Containing indentations, ribs, grooves or other deformations produced during the rolling process**
7214	**OTHER BARS AND RODS OF IRON OR NON- ALLOY STEEL, NOT FURTHER WORKED THAN FORGED, HOT-ROLLED, HOT-DRAWN OR HOT- EXTRUDED, BUT INCLUDING THOSE TWISTED AFTER ROLLING**	
7214.0.00	**47**	**Containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling**
7227	**BARS AND RODS, HOT-ROLLED, IN IRREGULARLY WOUND COILS, OF OTHER ALLOY STEEL**	
7227.90	**Other**	
7227.90.10	**69**	**Goods, as follows:** **a. of high alloy steel;** **b. "flattened circles" and "modified rectangles" as defined in Note 1(l) to Chapter 72**
7227.90.90	**01**	***Containing indentations, ribs, grooves or other deformations produced during the rolling process***
	02	***Of circular cross-section measuring less than 14 mm in diameter***
	04	***Other***
7228	**OTHER BARS AND RODS OF OTHER ALLOY STEEL; ANGLES, SHAPES AND SECTIONS, OF OTHER ALLOY STEEL; HOLLOW DRILL BARS AND RODS, OF ALLOY OR NON-ALLOY STEEL**	
7228.30	**Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded**	
7228.30.10	**70**	**Goods, as follows:** **a. of high alloy steel;** **b. "flattened circles" and "modified rectangles" as defined in Note 1(m) to Chapter 72**
7228.30.90	**40**	***Containing indentations, ribs, grooves or other deformations produced during the rolling process***
7228.60	**Other bars and rods**	
7228.60.10	**72**	**Goods, as follows:** **a. of high alloy steel;** **b. "flattened circles" and "modified rectangles" as defined in Note 1(m) to Chapter 72**

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number:	Anti-Dumping Notice No 2020/111
Date ADN was published:	10 November 2020

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

Please refer to Attachment 1 - ADN 2020/111

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

9. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

Please refer to Attachment 2 - Grounds for review.

10. **Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

Please refer to Attachment 2 - Grounds for review.

11. **Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:**

Please refer to Attachment 2 - Grounds for review.

12. **Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:**

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Please refer to Attachment 2 - Grounds for review.

13. **Please list all attachments provided in support of this application:**

The attachments provided in support of this application are:

- **Attachment 1 – ADN 2020/111;**
- **Attachment 2 – Grounds for review – confidential;**
- **Attachment 3 – Grounds for review – for public record; and**
- **Attachment 4 – Letter to ADRP re ML authority.**

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:	
Name:	**Charles Zhan**
Position:	**Partner**
Organisation:	**Moulis Legal**
Date:	**10 December 2020**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative:	**Charles Zhan**
Organisation:	**Moulis Legal**
Address:	**6/2 Brindabella Circuit Brindabella Business Park Canberra International Airport, ACT Australia 2609**
Email address:	**charles.zhan@moulislegal.com**
Telephone number:	**+61 2 6163 1000**

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

Please refer to Attachment 3 – letter of authority

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

Australian Government
Department of Industry, Science, Energy and Resources

Anti-Dumping Commission

ANTI-DUMPING NOTICE NO. 2020/111

Customs Act 1901 – Part XVB

Steel reinforcing bar

Exported from the Republic of Korea, Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co. Ltd)

Findings of the Continuation Inquiry No. 546 into Anti-Dumping Measures

Public Notice under section 269ZHG(1)of the Customs Act 1901[1]

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 3 March 2020, into the continuation of the anti-dumping measures in the form of a dumping duty notice published on 19 November 2015 applying to steel reinforcing bar exported to Australia from the Republic of Korea (Korea), Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co. Ltd).

Recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 546* (REP 546).

I, KAREN ANDREWS, the Minister for Industry, Science and Technology, have considered REP 546 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts and law therein.

[1] All legislative references are to the *Customs Act 1901* (the Act) unless otherwise specified.

Under section 269ZHG(1)(b) of the *Customs Act 1901* (the Act), I declare that I have decided to secure the continuation of the anti-dumping measures and I determine, pursuant to section 269ZHG(4)(a) of the Act, that:

- the notice continues in force after 19 November 2020, but after this day, the notice ceases to apply in relation to exporters of steel reinforcing bar from Singapore and Taiwan (except Power Steel Co. Ltd); and

- the notice continues in force after 19 November 2020, but after this day the notice has effect as if different specified variable factors had been fixed in relation to all exporters of steel reinforcing bar from Korea and Spain (except Nervacero S.A.).

In accordance with sections 8(5) and 8(5BB) of the *Customs Tariff (Anti-Dumping) Act* 1975, and the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation), I determine that the interim duty payable is an amount worked out in accordance with the:

- Floor price duty method pursuant to sections 5(4) and 5(5) of the Regulation, for steel reinforcing bar exported by the exporter Compañía Española de Laminación, S.L. from Spain.

- Combination of fixed and variable duty method (combination duty method) pursuant to sections 5(2) and 5(3)(a) of the Regulation, for steel reinforcing bar exported by the exporter Daehan Steel Co., Ltd from Korea.

- Combination duty method pursuant to sections 5(2) and 5(3)(a) of the Regulation, for steel reinforcing bar exported by uncooperative and all other exporters from Korea and Spain (except Nervacero S.A.).

Particulars of the dumping margins established for each of the exporters based on the revised variable factors and the effective rates of duty are also set out in the following table. The actual interim duty liability may be higher than the effective rate of duty due to a number of factors.

Country	Exporter	Dumping Margin	Effective rate of duty	Duty Method
Korea	Daehan Steel Co., Ltd	3.9%	3.9%	Combination duty
	Uncooperative and all other exporters	4.0%	4.0%	Combination duty
Spain	Compañía Española de Laminación, S.L.	0.0%	Confidential	Floor price
	Uncooperative and all other exporters (except Nervacero S.A.)	8.2%	8.2%	Combination duty

To preserve confidentiality, details of the revised variable factors such as Ascertained Export Price (AEP), Normal Value and Non-Injurious Price (NIP) will not be published.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 546 has been placed on the public record, which may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.industry.gov.au.

Enquiries about this notice may be directed to the Case Manager on telephone number +61 3 8539 2461, fax number +61 3 8539 2499 or email investigations2@adcommission.gov.au.

Dated this 6th day of November 2020

KAREN ANDREWS
Minister for Industry, Science and Technology

In the Anti-Dumping Review Panel

10 December 2020

Application for review - continuation inquiry concerning steel reinforcing bar from Spain (excpect Nervacero S.A.)

Compañía Española de Laminación, S.L.

A Introduction

By way of notice published on 9 December 2019, the Commission invited certain persons to apply for the continuation of the subject anti-dumping measures.[1]

[1] ADN 2019/139.

On 6 February 2020, in response to the invitation from the Commission, Infrabuild (Newcastle) Pty Ltd (formerly Liberty OneSteel (Newcastle) Pty Ltd) (hereafter "Infrabuild") applied to the Commission for such a continuation.

On 3 March 2020, and on the basis of the application, the Commission initiated a continuation inquiry (hereafter "Inquiry 546").[2] The subject matter of the continuation inquiry was described by the Commission as follows:

> *whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of steel reinforcing bar (rebar, or the goods) exported to Australia from the Republic of Korea, Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co. Ltd) (collectively referred to hereafter as, the subject countries) is justified.*[3]

At the conclusion of Inquiry 546, the Minister for Industry, Science and Technology ("the Minister") declared under Section 269ZHG of the *Customs Act 1901* ("the Act"), that she had decided:

- to secure the continuation of anti-dumping measures applying to reinforcing bar ("rebar" or "the GUC") exported to Australia from Korea and Spain (except Nervacero S.A.); and
- not to secure the continuation of the anti-dumping measures applying to rebar exported to Australia from Singapore and Taiwan,

("the Minister's Decision").

The recommendations of the Commission to that effect are contained in *Final Report No. 546 – Inquiry into the Continuation of the Anti-Dumping Measures Applying to Steel Reinforcing Bar exported to Australian from the Republic of Korea, Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co. Ltd)* ("Report 546"). The Minister confirmed that in making her decision she had:

> *…considered REP 546 and decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts and law therein.*[4]

The decision of the Minister was made on 6 November 2020 and subsequently published on the website of the Commission on 10 November 2020.[5]

---

2 ADN 2020/020.

3 ADN 2020/020

4 ADN 2020/111 at page 1.

5 ADN 2020/111

Compañía Española de Laminación, S.L. ("Celsa Barcelona") is a Spanish manufacturer and exporter of rebar. With respect to Celsa Barcelona, Report 546 determined a dumping margin of 0.0% for the inquiry period ("IP"). Report 546 also determined that the measure would be continued as against against exports from Celsa Barcelona on a floor-price basis after 20 November 2020.

As outlined in this application, Celsa Barcelona seeks review by the Anti-Dumping Review Panel ("Review Panel") of the Minister's Decision under Section 269ZZA(1)(d) and 269ZZC of the *Customs Act 1901* ("the Act").

We now address the requirements of both the form of application that has been approved by the Senior Panel Member of the Review Panel under Section 269ZY of the Act, and of Section 269ZZE(2) of the Act in relation to our client's grounds of review, being those requirements not already addressed within the text of the approved form itself, which we have also completed and lodged with the Review Panel.

B Grounds – no probable likelihood of dumping and material injury that the measure is intended to prevent

9 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

At the outset, we note that Section 269ZHF(2) of the Act provides the relevant criteria that the Commissioner must apply in its recommendation to the Minister in a continuation inquiry:

> *The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is 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 or subsidisation and the material injury that the anti-dumping measure is intended to prevent.* [underlining supplied]

It is also helpful to note the following comments by the Review Panel regarding the standard that the Commissioner must apply in such a continuation inquiry:

> *WTO jurisprudence suggests investigating authorities, such as the Commissioner, are subject to an overarching obligation to conduct an objective examination on the basis of positive evidence. Positive evidence means that the evidence must be of an affirmative, objective and verifiable character, and that it must be credible. When an investigating authority might have to rely upon reasonable assumptions and draw inferences, these should be derived as reasonable*

> *inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified. Further, a methodology premised upon unsubstantiated assumptions would not satisfy the positive evidence standard, and an assumption is not properly substantiated when an investigating authority does not explain why it would be appropriate to use it in the analysis.* [6]

In that ADRP Report, the Review Panel also noted that the factors listed in Section 269TAE of the Act may be relevant considerations which must be taken into account to ensure a reasoned conclusion based upon positive evidence in a continuation inquiry for the purposes of determining "*the material injury that the measures are intended to prevent*." The Review Panel further specified that this examination requires both that relevant considerations be investigated and that the impact of other factors be excluded from the material injury analysis.[7]

In our view, the reasons contained in Report 546 with respect to the finding that the measure should be continued as against Celsa Barcelona fail to meet the legislative requirement under Section 269ZHF(2) and do not properly account for the relevant considerations. We maintain that:

1. Report 546 failed to properly account for the change in the circumstances of the Australian market since the measure was imposed, particularly the rise of imports not subject to measures, and improperly relied on factors unrelated to any likelihood of dumping and material injury caused by Celsa Barcelona;

2. Report 546's finding of the likely effect of exports by Celsa Barcelona and their impact on the Australian industry is speculative, biased, and not based on an objective examination of positive evidence.

We explore these issues in turn as follows.

a Improper consideration of changes in the circumstances in the Australian market and factors unrelated to exports from Celsa Barcelona;

To assist with the Review Panel's understanding of the material injury that the measure is intended to prevent, we consider it useful to refer to the following chart from Report 546, which shows the market share composition in the Australian market before and after the imposition of the subject measure in 2015:

---

6 ADRP Report 2019-104, at page 17.

7 ibid, at pages 27-32

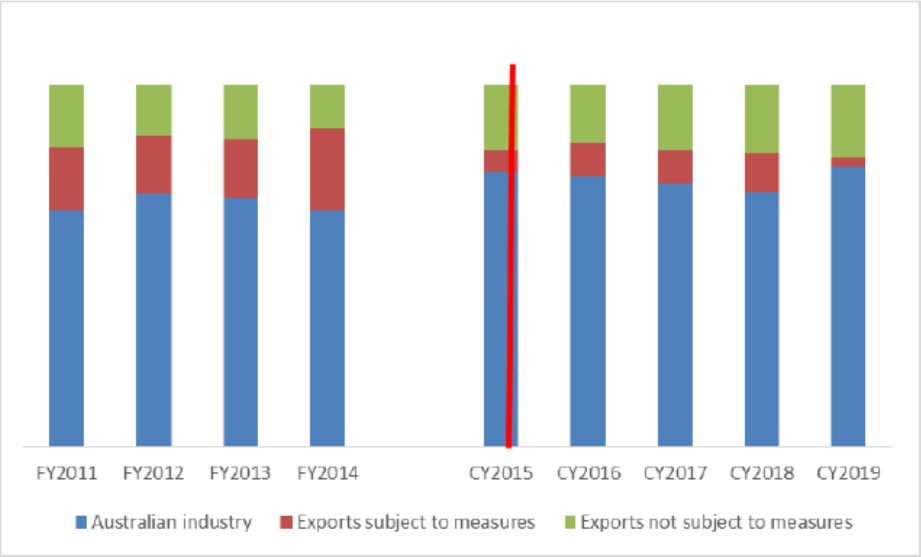

Figure 7: Australian market share

The graph shows that the "exports subject to measures" accounted for about 23% of the total market share in Australia during the original period of investigation of financial year 2014. This was one of the bases for the Minister's decision to impose the original measure in 2015, following the conclusion of Investigation 264. By contrast, during the inquiry period, exports subject to measures accounted for less than 3% of the total market in Australia, whilst the Australian industry's market share grew from about 65% to 77%, and the market share of exports not subject to the measures nearly doubled, from 12% to 20%. Out of the 3% market share accounted for by exports subject to measures during the inquiry period, none were exports from Celsa Barcelona. This market is mostly represented by exports from Singapore, in relation to which Report 546 considered that the measure should be allowed to expire.

Further, Report 546 shows that despite the imposition of the measures since 2015 Infrabuild continued to be unprofitable in nearly all recent times, whilst exports from Celsa Barcelona diminished:

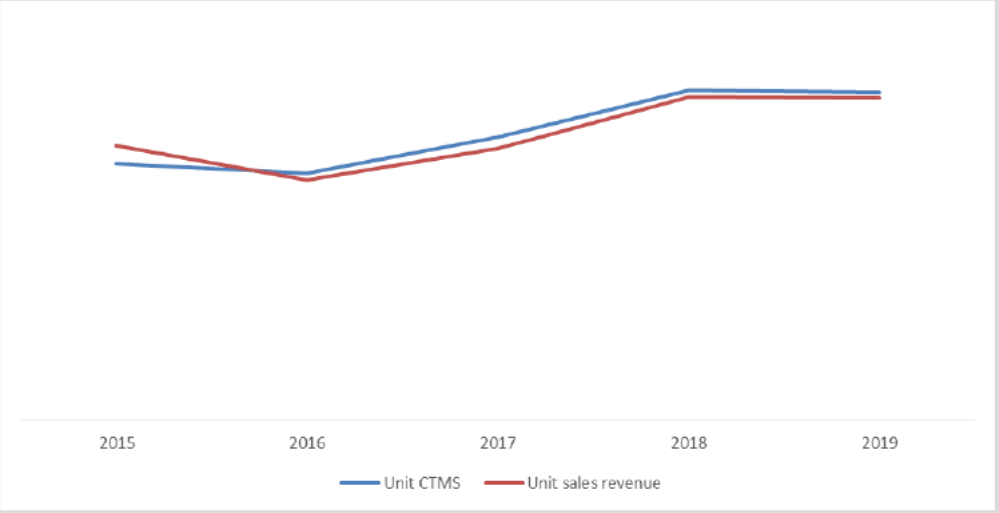

Figure 8: Australian industry unit selling price and CTMS

In our view, these factual analyses show that:

- any volume-related material injury that the measure was intended to prevent is either non-existent or was no longer being caused by Celsa Barcelona's exports as were subject to the measure during the inquiry period;
- any price-related material injury that the measure was intended to prevent was displaced by exports during the inquiry period not subject to measures;
- the material source of competition for the Australian industry relates to exports not subject to the measure under consideration;
- Celsa Barcelona's exports, which were considered to have caused material injury to the Australian industry on a "cumulative" basis with other exports in the original investigation, no longer display the same characteristics or support the same conclusion in the inquiry period.

Indeed, the Australian industry has repeatedly advised the Commission that the contemporary source of its material injury is imports from Turkey. This is evident from Infrabuild's application for the imposition of dumping duty against Turkish imports, leading to the initiation of Investigation 495. Even during the continuation inquiry, Infrabuild continued to emphasize its view that Turkish exports are the dominant source of imports in the Australian market and that the dominance of those exports is likely to continue, displacing other sources of imports, unless there were major shifts in the existing trade measures targeting Turkey in other jurisdictions, such as the US Section 232 measures.[8]

[8] See Infrabuild's application for the continuation inquiry, EPR546-001, at pages 82-86

During the continuation inquiry, Celsa Barcelona urged the Commission to properly account for factors unrelated to exports subject to the measure in determining if the measure should be allowed to expire. In responding to the Statement of Essential Facts 546 ("the SEF Submission"), Celsa Barcelona submitted:

> *The existing presence of exports not subject to measures and their influences on the Australian industry is a critically important factor that the Commission must take into account. The Australian industry's complaint that imports from Turkey have replaced other export sources and have been the key source of its "material injury" is well documented and extensively acknowledged by the Applicant itself.[9] Celsa Barcelona notes that the Commission investigated this complaint of the Australian industry in Investigation 495. That investigation has since been terminated twice, with no dumping detected.*
>
> *The Australian industry's comments regarding the Turkish imports are relevant for the purpose of this continuation inquiry. In Investigation 495, the Australian industry claimed:*
>
> - *Import volumes from Turkey for rebar in straight lengths increased by 123% between November and December 2018, with exports of coil increasing by 194% in that same period.[10] These volumes were anticipated to arrive in Australia in the latter half of January and February 2019.[11] Imports from Turkey increased again between April 2019 to June 2019, by 591% and the imports have continued in large volumes.[12]*
> - *There is a direct correlation between the increase in volumes of rebar imported from Turkey and the Australian industry's quarterly sales volume and market share for rebar.[13]*
> - *The prices of Turkish exports to Australia applied downwards pressure on the Australian industry's prices. This was due to InfraBuild's market-based pricing policy.[14]*

---

9 EPR 546, Doc 001, pages 56, 82.

10 EPR 495 Doc 019, Submission by InfraBuild, page 2.

11 EPR 495 Doc 019, page 6.

12 EPR495a-039, at page 9.

13 EPR 495, Doc 001, page 45.

14 EPR 495, Doc 001, page 47.

- *Between 2014 and 2018, InfraBuild reduced its prices for rebar to its customers, as based on its market intelligence concerning import offers from Turkey.[15] This resulted in price suppression caused by those price offers for goods exported from Turkey.[16]*

As shown in Figure 12 of the SEF, imports not subject to measures, which include imports from Turkey, continue to represent the lowest priced source of imports, and command nearly 90% of the market share of goods imported into Australia during the inquiry period. There is no evidence to suggest that allowing the measure to expire as against Celsa Barcelona would cause Turkish exporters to be any less competitive in their price offers or that Celsa Barcelona would resultantly export the GUC to Australia and undersell those imports. The question of dumping does not even impact on the analysis. Why the Commission thinks that Celsa Barcelona, operating profitably and at high capacity utilization in its production for the Spanish and EU markets, would suddenly decide to "take on" Turkish exporters in a market as far away as Australia. There is simply no incentive or desire on Celsa Barcelona to export to Australia at a price that would undercut the prices of both the Australian industry and of the Turkish exporters. The proposition that Celsa Barcelona would renew dumped exports to the extent that the prices of such exports would independently "put downward pressure" on the prices of the Australian industry and cause it material injury is not even remotely believable.

Un-dumped exports account for almost all of the import market in Australia. The presence and prices of those exports count against the likelihood that exports from Celsa Barcelona would be renewed, at dumped prices, and thereby cause material injury to the Australian industry.

Despite the direct and positive evidence from the Australian industry itself, Report 546 decided to ignore and/or "not accept" this most critical factor, being a factor that affects both the Australian industry's material injury claim and any analysis of the likelihood of any recurrence or continuation of dumping-caused injury from Celsa Barcelona. Report 546 states:

The Australian industry may be injured by multiple sources and due to various reasons. The Commission does not accept that the existence of other causes of injury negates the injury that the Australian industry has experienced as a result of dumped exports from the subject countries. While the Commission agrees that injury caused by other factors should not be attributed to dumping, it is also noted that dumping need not be the sole cause of injury to the industry.[17]

---

15 EPR 495, Doc 001, page 47

16 EPR 495, Doc 001, page 55.

17 Report 546, at page 69.

Report 546 relies on no evidence whatsoever in its denial that "other causes of injury" have displaced the impact of any dumping by imports subject to the measure. Section 269ZHF(2) specifically requires that the Commission must not recommend continuation of the measure unless it is satisfied that expiry of the measure will or will be likely to *lead* to a continuation or recurrence of the dumping-caused injury that the measure intended to prevent . The Commission has before it positive evidence from the Australian industry itself suggesting that such likelihood is now diminished or non-existent due to the significant presence of other factors as envisaged by Section 269TAE(2A) of the Act, especially the low priced undumped imports from Turkey. How can the Commission decide not to accept such a fact? With respect, the decision is unsubstantiated and not supported by positive evidence.

Further, we take issue with Report 546's treatment of supply by companies in the Celsa Group which are not the subject of the continuation inquiry. If at all relevant, they can only be a factor unrelated to dumping and the likely effect of exports subject to the measure. Report 546 referred to this factor as a *"Celsa Group"* practice of *"alternating supply between mills"*.[18]

As Report 546 noted, Celsa Barcelona raised this concern in its submission in response to SEF 546 ("the SEF Submission"), where it stated:

> 3 *The SEF considers sales to Australia by Celsa Poland as being "a relevant consideration" because "the CELSA Group is able to alternate its supply source". However the SEF gives little reasoning as to how or why an alternate supply source makes it more or less likely that the expiration of the measure would lead to recurrence of dumping and the causing of material injury by one of those sources. Instead, it would be more rational to think that having an alternate source of supply would naturally disprove that proposition. If anything, the establishment of a supply channel between Celsa Poland and Australia indicates that it is unnecessary for Celsa Barcelona to re-enter the Australian market. Just because there are a number of Celsa factories around the world does not make it any more likely that one of them would engage in dumping into Australia if it was not restrained from doing so. The fact that there are alternate sources of supply says nothing about the likelihood of resumed dumping by Celsa Barcelona. Where is the incentive for Celsa Barcelona to recommence exporting to Australia at a "dumping" level in order to compete with other exporters, including its affiliated company in Poland?*
>
> 4 *The conclusion that "[i]n the absence of measures, it is likely that volumes that may have been supplied from Nervacero will be supplied from CELSA as has been found in*

[18] Report 546, at page 84

> *the past (Figure 11 refers)" is pure speculation. Such speculation ignores the fact that the Australian market has significantly changed since the time that either Celsa Barcelona or Nervacero was a major exporter to Australia. The import market is now dominated by exports not subject to the inquiry, especially imports from Turkey. Major customers of Nervacero – such as the Australian industry itself - have also shifted there sources of supply (or, in the case of the Australian industry, its own production arrangements) to an extent that such supply channel has discontinued. The speculative "volumes that may have been supplied" simply do not exist.* [underlining supplied]

However, Report 546 continued to regard the "Celsa Group" factor as a relevant consideration and as a key basis for its finding that expiry of the measure would be likely to lead to continued dumping and material injury caused by Celsa Barcelona. Report 546 referred to this factor in several places:

> *7.4.2 Export volumes and the impact of measures*
>
> *…*
>
> *InfraBuild claims that the CELSA Group's supply capacity has expanded with the ACRS certification of the CELSA Group's mill in Poland. 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 (discussed further in section 7.5.9).*
>
> *7.4.4 Maintenance of distribution links*
>
> *…*
>
> *The Commission's analysis of the ABF import database indicated that CELSA supplied some of the same purchasers following the introduction of measures as it had supplied prior to the measures. The Commission also notes, as discussed in section 7.4.2 above, that the CELSA Group has supplied the Australian market through its other mills following the imposition of measures. The Commission considers this an indicator that CELSA has maintained an ongoing relationship with importers, and that Australia remains an attractive market for Spanish rebar exports.*

…

7.4.6 Production capacity and capacity utilization

…

The Commission observes that it is a relevant consideration to its production capacity that the CELSA Group is able to access production from different mills in Spain to meet demand in Australia as has been observed in Figure 11. The CELSA Group is not limited to the capacity of a specific mill but can access capacity from other mills within the group in order to supply the Australian market.

…

7.5.9 Commission's response to the EC, Spanish Government and CELSA submissions

…

The Spanish Government and CELSA object to the Commission's views concerning the substitution of mills by the CELSA Group. The Commission's observations concerning the substitution of mills relate to the CELSA Group's access to production capacity from other mills and its continued interest in the Australian market. This is further demonstrated by the recurrence of exports by CELSA in 2020.

…

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.

…

7.6.5 Is injury from dumping likely to be material?

…

The Commission concurs with InfraBuild's claim concerning the CELSA Group and its practice of alternating supply between mills (section 7.4.2 refers). Spain and the EU are experiencing a downturn. It is expected that demand for rebar will reduce in the medium term. The likely effect

> *of this will be to incentivise exports where Spanish exporters already have distribution links. CELSA has also exported to Australia following the inquiry period at prices lower than the other subject countries and at volumes that are not insignificant in comparison with its historical volumes since the measures. The Commission has found that in the absence of measures it is likely that the CELSA Group will continue to supply through CELSA Barcelona, and in higher volumes and lower prices as has been seen in 2020.*

The capability or actual supply by entities within the "Celsa Group" which are not covered by the expiring measure being the subject of the continuation are factors unrelated to likely dumping of exports and the likely effect of any such dumping by Celsa Barcelona. In our view, Report 546 fails to address the flaws identified by Celsa Barcelona in its SEF submission as referred to above, specifically, *"how or why an alternate supply source makes it more or less likely that the expiration of the measure would lead to recurrence of dumping and the causing of material injury by one of those sources".* The fact that Celsa Barcelona exported a small amount of rebar after the inquiry period in the first quarter of 2020 does not lend any support to Report 546's use of such "other factors". If anything, such exports by Celsa Barcelona, which occurred despite the existence of the measure, disproves the theory that Celsa Barcelona's affiliation with other entities in the Celsa Group means that expiry of the measure would be likely to lead to a recurrence of dumping and material injury caused by Celsa Barcelona. There is no probable expectation of such an occurrence based on that evidence.

b Improper and incorrect determination regarding likelihood of dumping and material injury caused by Celsa Barcelona

Report 546 determined a dumping margin of 0% with respect to Celsa Barcelona, on the basis that Celsa Barcelona did not export any GUC during the inquiry period. Despite this, under *"Part 7 – Likelihood that dumping and material injury will continue or recur"*, Report 546 found that:

> *The Commission has established in section 7.5.9 that a downturn in the Spanish and European construction markets have had an impact on Spanish producers' domestic demand for rebar. CELSA has also exported the GUC to Australia following the inquiry period at a price below that of the other subject countries, and at a volume that is more than double the volumes it exported in 2018.*
>
> *The Commission has observed that the CELSA Group is able to switch supply mills in Spain (discussed in section 7.4.2.3) and therefore has access to further production capacity to supply the Australian market.*
>
> *These factors, together with the substitutability and price-sensitive nature of the goods, and the influence of import prices on Australian industry's prices, leads the Commission to the view that*

> *in the absence of measures, dumping of Spanish rebar is likely to recur resulting in the likely recurrence of injury to the Australian industry.*

In our view, Report 546's reasoning with respect to Celsa Barcelona falls far short of the level of satisfaction required under Section 269ZHF(2) of the Act, and is not supported by an objective examination of positive evidence. We have already addressed the issues concerning the Commission's incorrect reliance of the alleged ability to switch supply within Celsa Group, and its failure to properly account for the changes in the Australian market during the inquiry period, in B-9.1 above. We now address the other aspects of Report 546's determination regarding Celsa Barcelona.

Firstly, Report 546 appears to claim that a possible *"downturn in the Spanish and European construction markets*" was a key reason for its finding. However, such view appears to be solely based on a few broadly stated news articles without any verification or evaluation of the actual circumstances concerning Celsa Barcelona. The Commission did not make any inquiry with Celsa Barcelona regarding the actual effect of such "forecasted" downturns. During the continuation inquiry, Celsa Barcelona provided, and the Commission verified, actual commercial information concerning Celsa Barcelona's operations in the inquiry period. The actual data clearly supported Celsa Barcelona's advice that:

- it has successfully shifted its commercial focus to supplying the domestic Spanish and EU markets;
- that it is in a healthy financial position; and
- that there is little incentive for or indication that it would engage in exporting the GUC to the Australian market at dumped prices and at a material volume that could cause material injury to the Australian industry.

As stated in Celsa Barcelona's SEF Submission:

> *Celsa Barcelona's individual circumstances have changed from those at the time leading up to the imposition of the anti-dumping measure in 2015. Such changes are directly relevant to the Commission's consideration of the factors prescribed under Section 269ZHF(2). Celsa Barcelona's commercial focus and sales practices is now significantly different. Celsa Barcelona has pivoted its sales and marketing focus onto the domestic Spanish and EU market, and away from non-EU countries including Australia. This is clearly demonstrated by the fact that Celsa Barcelona had only very small volume of export sales export during the inquiry period, and did not sell the GUC to Australia.*
>
> *As the Commission is aware, since the original measure was imposed in 2015, Celsa Barcelona's exports of the subject goods to Australia have declined significantly, despite the*

relatively low anti-dumping duty applicable to Celsa Barcelona. The key driver for this has been Celsa Barcelona's decision to focus on supplying the domestic Spanish and EU markets, in light of the strong recovery of the Spanish economy. This was explained in Celsa Barcelona's Exporter Questionnaire response ("EQR"):

> *By way of background, Celsa Barcelona would like to draw the Commission's attention to some broader changes to Celsa Barcelona's domestic sales of like goods during the period.*
>
> *The Spanish domestic market for steel reinforcing bar has changed considerably since the original investigation. In Spain, the demand for steel reinforcing bar has increased substantially as the Spanish construction market continues to recover from the impact of the global financial crisis initiated in 2007-2008. Please refer to EuroConstruct's Press Release which demonstrates the increasing Construction Markets in Spain and the European Union more widely (available here).*
>
> *As a result, Celsa Barcelona has been operating, particularly during the last years, at close to capacity. Celsa Barcelona's focus is on the supply of reinforcing bar mostly within the Spanish market and wire rod (which is produced from the same facility) in the Spanish and EU market.*

To put this into perspective, during the original investigation period of July 2013 to June 2014 exports accounted for the majority of Celsa Barcelona's sales of the GUC. In contrast, during the inquiry period Celsa Barcelona's domestic sales of the GUC in Spain accounted for more than [CONFIDENTIAL TEXT DELETED – number]% of its total sales of the GUC during the inquiry period. This percentage increases to near [CONFIDENTIAL TEXT DELETED – number]% once sales to other EU common market areas are taken into account. Sales outside the EU zone were mostly to [CONFIDENTIAL TEXT DELETED – sales information]. Celsa Barcelona's total production and sales of rebar [CONFIDENTIAL TEXT DELETED – sales and production information]. Celsa Barcelona's total rebar sales accounted for just over [CONFIDENTIAL TEXT DELETED – number]% of its total sales, a reduction of more than [CONFIDENTIAL TEXT DELETED – number]% from the position during the original investigation period.

As was verified by the Commission, Celsa Barcelona's domestic sales of like goods that are "profitable" or "recoverable" accounted for [CONFIDENTIAL TEXT DELETED – number]% of total sales during the inquiry period. Celsa Barcelona's domestic sales achieved a net profit of nearly [CONFIDENTIAL TEXT DELETED – number]%. Celsa Barcelona also achieved [CONFIDENTIAL TEXT DELETED – profit overall]. Celsa Barcelona has been running at full

> *capacity during the inquiry period and the Spanish market has fully recovered since the original investigation, when it was still suffering in the aftermath of the financial crisis. Again, all of this can be contrasted with the original investigation period, when Celsa Barcelona was in a difficult financial position, with low capacity utilization [CONFIDENTIAL TEXT DELETED – historic operation condition].*
>
> *Celsa Barcelona advises that its [CONFIDENTIAL TEXT DELETED – business plan] is unlikely to change in the foreseeable future. There is no economic incentive for Celsa Barcelona to recommence exporting substantial volumes of GUC to Australia, let alone to engage in dumping, should the measure be allowed to expire.*

This is to be contrasted with Report 546's reliance on unverified and speculative headline-grabbing statements in news articles to base its decision:

> *As it is now faced with a new downturn, described as the "sharpest contraction in activity since the 2009 global financial crisis", the Commission is of the view that similar exporting of dumped rebar is likely.*[19] [footnote omitted]

With respect, if the Commissioner or the Minister could simply make decisions in a continuation inquiry on such a basis, there would be no need for such an inquiry, or for the provision of extensive information by companies like Celsa Barcelona, and its verification.

The outbreak of the pandemic during the post inquiry period in 2020 was an unforeseeable and unfortunate global event. It is also undisputable that such an event can have broad economic impacts around the world, and that it brings uncertainty to economic conditions, including for Celsa Barcelona. The uncertainty and potential economic downturn may even support speculation as to the likely future behaviour of an exporter. It may also raise questions about whether expiry of the measure is still as *unlikely* to cause material dumping and injury caused by Celsa Barcelona's exports to recur in the future as was demonstrated by the positive evidence concerning Celsa Barcelona during the inquiry period. However such uncertainty and speculation cannot serve as positive evidence that expiry of the measure will more *likely* than not lead to recurrence of *dumping* and *material injury* caused by exports of Celsa Barcelona. Thus, Report 546's view that *"similar exporting of dumped rebar is likely*" is purely speculative and is not based on any evidence. Indeed, if the Commission has sought information regarding the 2020 period from Celsa Barcelona, that information would have shown that there is little evidence of major changes to Celsa Barcelona's financial position or commercial operation since the inquiry period, and that it continues to focus on the profitable domestic market.

---

19 Report 546, at page 77.

Secondly, to the extent that Report 546 places great relevance on Celsa Barcelona's exports in the first quarter of 2020, we make the following observations for the Review Panel's consideration.

1. Report 546 sought to depict Celsa Barcelona's only exports during 2020 as *"not insignificant"* and as *"more than double the volume it exported in 2018"*. These comments are misleading. The fact is that Celsa Barcelona sold just over [CONFIDENTIAL TEXT DELETED – number] tonnes of the GUC to Australia [CONFIDENTIAL TEXT DELETED – sales information]. Based on our estimation, this would have accounted for less than [CONFIDENTIAL TEXT DELETED – number]% of Australia's total imports for the inquiry period, and a much smaller and closer to 0% portion of the total Australian market. Contrary to Report 546's findings, such volume is clearly *insignificant*, and *negligible* for the purpose of any material injury determination. With respect, we submit that Report 546's characterisation and exaggeration of the significance of Celsa Barcelona's exports in the post-inquiry period is incorrect and out of context.

2. Report 546 repeatedly commented that exports from Celsa Barcelona were *"low price relative to the subject countries"*. This says nothing about how Celsa Barcelona's price compared to the Australian industry or to the other sources of imports. As noted above, the total volume of imports from *"subject countries"* has been minimal in recent times, and is dominated by higher priced imports from Singapore, which the Commission considered not to have undercut the prices of the Australian industry. This observation also appears to have been based on FOB price, rather than the FIS price which is much more relevant for the purpose of injury analysis. Exports from Spain attract higher ocean freight and higher import tariffs in comparison to most other major sources of imports. This was particularly the case for Celsa Barcelona's only exports in 2020, which coincided with a very sharp increase in shipping costs due to COVID-19 disruptions. The reference to FOB price is hardly relevant.

3. Report 546's emphasis on the "price sensitivity" of the Australian market is also contradicted by its own finding that:

    a. the largest source of exports subject to the measure, being exports from Singapore, did not undercut the prices of the Australian industry, and

    b. that the lowest and highest volume imports from Turkey and other sources not subject to the measure are not determinative of any material injury likely to be experienced by the Australian industry

    Indeed, Report 546 appears to hold the view that it is doubtful that Australian industry will necessarily be affected by the low prices on the market:

> *In respect of claims submitted by NatSteel and CELSA that undumped imports from non-subject countries (specifically Turkey as asserted by NatSteel) should be the point of reference for establishing the USP, the Commission does not consider this approach to be suitable because the Australian industry's prices of coil and straight rebar taken collectively, are influenced by a number of different price offers in the market and cannot necessarily be attributed to the lowest import offer from Turkey and other countries not subject to measures. As a result, the Commission does not consider this method to be preferable.* [underlining supplied]

With respect, in our view Report 546's determination of the likelihood of a recurrence of dumping and material injury that would be caused thereby on the part of Celsa Barcelona due to expiry of the measure is inconsistent with the standard required from an objective and unbiased decision maker.

The fact is, Celsa Barcelona did not export the GUC to Australia during the inquiry period. Its exports to Australia after the inquiry period and before the expiry date of the measure were of minimal and negligible volume, were not the lowest-priced and were not capable of causing material injury to the Australian industry. There is simply no evidence that expiry of the measure will or will be likely to lead to a renewal of dumping by Celsa Barcelona and material injury, caused by that (improbable) dumping that the measure is intended to prevent.

10 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

The correct or preferable decision is that Minister should declare, under Section 269ZHG of the Act, not to secure the continuation of the anti-dumping measures with respect to Celsa Barcelona after 19 November 2020.

11 Grounds in support of decision

Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

The grounds raised in question 9 support the making of the proposed correct or preferable decision by demonstrating the errors of fact and reasoning in the recommendations and reasons for the recommendations in Report 546, which were accepted by the Minister in her Decision.

12 Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The proposed decision is materially different to the reviewable decision, as the proposed decision will allow the measures to expire after 19 November 2020. On that basis exports of rebar from Celsa Barcelona will not be subject to anti-dumping measures.

C Conclusion and request

The Minister's Decision to which this application refers is a reviewable decision under Section 269ZZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Minister and form part of the reviewable decision that Celsa Barcelona seeks to have reviewed/

Celsa Barcelona is an interested party in relation to the reviewable decision.

Celsa Barcelona's application is in the prescribed form and has otherwise been lodged as required by the Act.

We submit that the application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of is application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct and preferable decision that should result from the grounds that are raised in the application are dealt with and detailed above.

Lodged for and on behalf of Compañía Española de Laminación, S.L.

Charles Zhan
Partner