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:<br>InfraBuild (Newcastle) Pty Ltd |
| Address:<br>Level 28, 88 Phillip Street, SYDNEY NSW 2000 |
| Type of entity (trade union, corporation, government etc.):<br>Corporation |

### 2. Contact person for applicant

| |
|---|
| Full name:<br>[redacted] |
| Position:<br>[redacted] |
| Email address:<br>[redacted] |
| Telephone number:<br>[redacted] |

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

The applicant considers it is an interested party within the meaning of s.269ZX(ab) of the *Customs Act 1901*, as it was the applicant in relation to an application under s.269ZHB that led to the making of the reviewable decision.

### 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 which were the subject of the reviewable decision 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 which were the subject of the reviewable decision do not include:

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

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

Goods identified as steel reinforcing bar, as described in section 6 (above), are classified to the following tariff subheadings in schedule 3 to the *Customs Tariff Act 1995*:

- 7213.10.00 statistical code 42;
- 7214.20.00 statistical code 47;

- 7227.90.10 statistical code 69;
- 7227.90.90 statistical code 01, 02 and 04;
- 7228.30.10 statistical code 70;
- 7228.30.90 statistical code 40; and
- 7228.60.10 statistical code 72.

**8. Anti-Dumping Notice details:**

| Anti-Dumping Notice (ADN) number:<br>2020/111 |
|---|
| Date ADN was published:<br>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***

A copy of the notice of the reviewable decision is attached as Appendix A to this application.

## 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:**

The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that:

**Ground 1:**
For the purposes of s.269TAC(6) of the *Customs Act 1901*[3] the normal value of the goods exported to Australia by Daehan Steel Co., Ltd. (**Daehan**) could be ascertained by reference, in part, to the movement in the ascertained export prices specific to Daehan between the review period relevant to Review 486/489 and the current inquiry period. This finding is not supported by the terms of the provision under which it was purported to be made, as it is not 'relevant information' within the meaning of the provision.

**Ground 2:**
For the purposes of s.269TAB(3) the export price of the goods exported to Australia by 'uncooperative and all other exporters' from Korea could be ascertained by reference to the ascertained export price specific to Daehan in this inquiry period. This finding is not supported by the terms of the provision under which it was purported to be made, as it does not have regard to 'all relevant information' within the meaning of the provision.

**Ground 3:**
For the purposes of s.269TAC(6) the normal value of the goods exported to Australia by 'uncooperative and all other exporters' from Korea could be ascertained by reference to the ascertained normal value specific to Daehan in this inquiry period. To the extent that the ascertained normal value specific to Daehan is revoked and replaced by the Panel, it must also be revoked and replaced for 'uncooperative and all other exporters' from Korea.

**Ground 4:**
For the purposes of s.269TAC(1) the normal value of the goods exported to Australia by NatSteel Holdings Pte Ltd (**NatSteel**) could be ascertained by reference, in part, to sales of goods not produced in Singapore. The Commissioner also included sales of such goods in his low volume assessment finding under s.269TAC(14) and his determination of selling, general and administration (**SG&A**) costs under s.269TAC(2)(c)(ii). None of those findings are supported by the terms of the provisions under which they were purported to be made.

**Ground 5:**
For the purposes of s.269TAC(8) the normal value of the goods exported to Australia by NatSteel could be adjusted by both (a) a domestic credit terms expense, and (b) domestic factoring costs. This finding is not supported by the terms of the provision under which it was purported to be made.

**Ground 6:**
For the purposes of s.269TAC(6) the normal value of the goods exported to Australia by 'uncooperative and all other exporters' from Taiwan (except Power Steel Co. Ltd (**Power Steel**)) could be ascertained by reference, in part, to the movement in the ascertained export prices specific to 'all other exporters' between the review period relevant to Review 489 and the current inquiry period. This finding is not supported by the terms of the provision under which it was purported to be made, as it is not 'relevant information' within the meaning of the provision.

[3] All legislative references are to the *Customs Act 1901*, unless otherwise specified.

**Ground 7:**
For the purposes of s.269ZHF(2), the Commissioner ought to have been satisfied that the expiration of the measures applicable to exporters of the goods from Singapore would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent. The Commissioner's reasons for not so finding, are not reasonable, relying as they did on an unsound determination of the dumping margin, unsound analysis of the exporter's trade and export pricing behaviour and the recurrence of material injury following the inquiry period.

**Ground 8:**
For the purposes of s.269ZHF(2), the Commissioner ought to have been satisfied that the expiration of the measures applicable to exporters of the goods from Taiwan (except Power Steel) would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent. The Commissioner's reasons for not so finding, are not reasonable, relying as they did on an unsound determination of a dumping margin and unsound analysis of the exporters' trade and export pricing behaviour following the inquiry period.

**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:**

**Ground 1:**
The correct or preferable decision would ascertain the normal value of the goods exported to Australia by Daehan under s.269TAC(6) by reference, in part, to the movement in available published pricing information relevant to the Korean domestic market for rebar between the review period relevant to Review 486/489 and the current inquiry period.

**Ground 2:**
The correct or preferable decision would ascertain the export price of the goods exported to Australia by 'uncooperative and all other exporters' from Korea under s.269TAB(3) by reference to the Australian Border Force (**ABF**) import database available to the Commissioner.

**Ground 3:**
The correct or preferable decision would ascertain the normal value of the goods exported to Australia by 'uncooperative and all other exporters' from Korea under s.269TAC(6), by reference, in part, to the movement in available published pricing information relevant to the Korean domestic market for rebar between the review period relevant to Review 486/489 and the current inquiry period.

**Ground 4:**
The correct or preferable decision would ascertain the normal value of the goods exported to Australia by NatSteel under s.269TAC(1) without reference to sales of goods not produced in Singapore, and would not include sales of such goods in any low volume

assessment finding under s.269TAC(14) and any determination of SG&A costs under s.269TAC(2)(c)(ii).

**Ground 5:**
The correct or preferable decision would not adjust the normal value of the goods exported to Australia by NatSteel under s.269TAC(8) by both (a) a domestic credit terms expense, and (b) domestic factoring costs.

**Ground 6:**
The correct or preferable decision would ascertain the normal value of the goods exported to Australia by 'uncooperative and all other exporters' from Taiwan (except Power Steel) under s.269TAC(6), by reference, in part, to the movement in available published pricing information relevant to the Taiwanese domestic market for rebar between the review period relevant to Review 489 and the current inquiry period.

**Ground 7:**
The correct or preferable decision would be for the Commissioner to recommend that the Minister declare pursuant to s.269ZHG(1)(b), that she has decided to secure the continuation of the anti-dumping measures relating to the goods exported to Australia from Singapore.

**Ground 8:**
The correct or preferable decision would be for the Commissioner to recommend that the Minister declare pursuant to s.269ZHG(1)(b), that she has decided to secure the continuation of the anti-dumping measures relating to the goods exported to Australia from Taiwan (except Power Steel).

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

Elaboration of the grounds raised in question 9 can be found at Appendix B, attached.

**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.*

**Ground 1:**
The correct or preferable decision would increase the ascertained normal value of the goods exported to Australia by Daehan under s.269TAC(6), and increase the level of dumping determined for this exporter.

**Ground 2:**
The correct or preferable decision would decrease the ascertained export price of the goods exported to Australia by 'uncooperative and all other exporters' from Korea under s.269TAB(3), and increase the level of dumping determined for this category of exporters.

**Ground 3:**
The correct or preferable decision would increase the ascertained normal value of the goods exported to Australia by 'uncooperative and all other exporters' from Korea under s.269TAC(6), and increase the level of dumping determined for this category of exporter.

**Ground 4:**
The correct or preferable decision would increase the ascertained normal value of the goods exported to Australia by NatSteel under s.269TAC(1), and increase the level of dumping determined for this exporter.

**Ground 5:**
The correct or preferable decision would not result in a downward adjustment to the normal value of the goods exported to Australia by NatSteel under s.269TAC(8), resulting in an increase in the ascertained normal value, and an increase to the level of dumping determined for this exporter.

**Ground 6:**
The correct or preferable decision would increase the ascertained normal value of the goods exported to Australia by 'uncooperative and all other exporters' from Taiwan (except Power Steel), and increase the level of dumping determined for this category of exporters.

**Ground 7:**
The correct or preferable decision would result in the Minister publishing a notice under s.269ZHG(1) declaring that she has decided to secure the continuation of the anti-dumping measures relating to the goods exported to Australia from Singapore.

**Ground 8:**
The correct or preferable decision would result in the Minister publishing a notice under s.269ZHG(1) declaring that she has decided to secure the continuation of the anti-dumping measures relating to the goods exported to Australia from Taiwan (except Power Steel).

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

**Appendix A:** Copy of the notice of the reviewable decision.

**Appendix B :** Elaboration of the grounds raised in question 9.

**CONFIDENTIAL ATTACHMENT A:** Domestic rebar price survey - Korea

**CONFIDENTIAL ATTACHMENT B:** Domestic rebar price survey - Taiwan

## PART D: DECLARATION

The ~~applicant/~~the applicant's authorised representative *[delete inapplicable]* 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: **[sgd]**

Name: [redacted]

Position: [redacted]

Organisation: [redacted]

Date: 10/12/2020

## 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: [redacted] |
| Organisation: [redacted] |
| Address: [redacted] |
| Email address: [redacted] |
| Telephone number: [redacted] |

**Representative's authority to act**

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

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: **[sgd]**
(Applicant's authorised officer)

Name: [redacted]

Position: [redacted]

Organisation: InfraBuild (Newcastle) Pty Ltd

Date: 10/12/2020

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

# APPENDIX B

## Elaboration of the grounds raised in question 9

**Ground 1:**

**The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that for the purposes of s.269TAC(6)[1] the normal value of the goods exported to Australia by Daehan Steel Co., Ltd. (Daehan) could be ascertained by reference, in part, to the movement in the ascertained export prices specific to Daehan between the review period relevant to Review 486/489 and the current inquiry period. This finding is not supported by the terms of the provision under which it was purported to be made, as it is not 'relevant information' within the meaning of the provision.**

In *Report No. 546*[2] (**REP 546**), the Commissioner upheld his preliminary finding in *Statement of Essential Facts No. 546*[3] (**SEF 546**) that:

> *In calculating Daehan's normal value for this inquiry, an adjustment to the normal value ascertained in Review 486/489 has been made with reference to what the Commission considers to be the most reliable information available to it, namely the movement in the verified ascertained export prices specific to Daehan between the review period relevant to Review 486/489 and the current inquiry period.*[4]

In response to SEF 546, the applicant opposed the Commissioner's method of calculating the adjustment to the normal value last ascertained.[5] The applicant contends that calculating an adjustment to the normal value based on movement in the ascertained export prices of the exporter is not the correct or preferable decision.

The Commissioner's method of calculating an adjustment to the normal value is inconsistent with the comments of the Panel of the WTO Dispute Settlement Body in *Australia – Anti-Dumping Measures on A4 Copy Paper*,[6] which stressed the importance of identifying differences between an exporter's domestic and export prices, which may be such that they do not permit a proper comparison between the two:

> *In our view, how domestic prices and export prices of an individual exporter… are affected notwithstanding an equal decrease in input costs is likely to depend significantly upon a number of factors, <u>including the prevailing conditions of competition in each market and the existing relationship between price and cost</u>. <u>We consider that an exporter may find itself with different options in respect of how to take advantage of an input cost decrease</u>*

[1] All legislative references are to the *Customs Act 1901*, unless otherwise specified.
[2] Report No. 546, *Inquiry into the continuation of the anti-dumping measures applying to steel reinforcing bar exported to Australia from the Republic of Korea, Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co. Ltd)* (9 October 2020)
[3] EPR Folio No. 546/024.
[4] Report No. 546, p. 39.
[5] EPR Folio No. 546/027, pp. 2 – 4.
[6] Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper from Indonesia*, WT/DS529/R, adopted 4 December 2019.

> *depending on market conditions in each market. This is similar to a situation when a cost increase occurs and the exporter faces differing market conditions in domestic and export markets such that the exporter is able to pass on the cost increase to customers in one market but unable to do so in the other. Accordingly, we are not persuaded that a low-priced input used identically to produce merchandise for domestic and export markets will necessarily have the same effect on domestic prices and export prices and therefore necessarily permit a proper comparison. Rather, we find that whether the exporter's domestic sales permit a proper price comparison with the export price is a question that can only be ascertained through an examination of relevant factual circumstances.*[7] (emphasis added)

Given that the basic premise of dumping is the identification of *...a situation of international price discrimination*…[8] it would appear counterintuitive for the Commissioner to seek to extrapolate changes in the price of sales into the export market as indicative, or relevant, to likely changes to the price of sales into the exporter's domestic market.

The correct or preferable view is for the Commissioner to make a recommendation to the Minister based on available, published price surveys of domestic Korean rebar prices as the basis to adjust any relevant, but historic, normal value information for the exporter. An example of such information was provided by the applicant in its original application relating to this inquiry in support of the industry member's estimate of normal values and changes across the life-cycle of the measures.[9]

When a comparison of the average monthly published prices for rebar sold into the Korean domestic market during the review period for *Review No. 489* (1 July 2017 to 30 June 2018)[10] to the average monthly published Korean domestic rebar prices for the 'inquiry period' (1 January to 31 December 2019),[11] is taken, the change across the two periods was a **6.2 per cent increase** in Korean domestic rebar prices.

In contrast, the effect of the differences in the prevailing conditions of competition in each market and the existing relationship between price and cost were pronounced during these two reference periods – weighted average export prices to Australia declined by 1.1 per cent and (KRW denominated) scrap prices decreased by 6.9 per cent.[12] As such, the evidence supports the conclusion that movements in export prices and costs are not comparable, indicative or relevant to movements in domestic prices between the two reference periods, and as such form no lawful or reasonable basis for adjustment.

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[7] *Australia – Anti-Dumping Measures on A4 Copy Paper* at [7.80].
[8] https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm (accessed on 1 September 2020).
[9] EPR Folio No. 546/001 at CONFIDENTIAL ATTACHMENT 1.1.
[10] Domestic sales values for the period 1 June 2017 to 31 May 2018 have been taken in order to permit a proper comparison to the prices for goods exported during that period, but not entered for home consumption, generally, a month later (i.e. corresponding with the review period, 1 July 2017 to 30 June 2018.
[11] Domestic sales values for the period 1 December 2018 to 30 November 2019 have been taken in order to permit a proper comparison to the prices for goods exported during that period, but not entered for home consumption, generally, a month later (i.e. corresponding with the 'inquiry period', 1 January to 31 December 2019.
[12] EPR Folio No. 546/027 at CONFIDENTIAL ATTACHMENT A.

Therefore, the correct or preferable decision would be for the Commissioner to adjust the normal value ascertained in *Review Nos. 486/489* with the published survey of Korean domestic rebar price information previously supplied to the Commission by the applicant.

However, in REP 546, the Commissioner did not recommend an ascertained normal value to the Minister adjusted by the change in the previously supplied published survey of Korean domestic rebar price information, stating that:

> *The Commission did not use this pricing information as the basis for making a timing adjustment to historical normal values because the publisher of that information has previously stated that it does not consent to its use by the Commission.*
>
> *The Commission does not have any other published pricing information relevant to the Korean domestic market for rebar. The Commission therefore considers the approach it has adopted in determining the normal value for Daehan to be the most appropriate approach, as it is based on verified data which is closely related to the Korean exporter concerned.*[13] (emphasis added)

The Commissioner did not inform the applicant that he did *…not have any other published pricing information relevant to the Korean domestic market for rebar...* and that he considered that he *…did not have consent to use…* the published pricing information supplied by the applicant.

By not informing the applicant that the Commissioner did not intend to use the published pricing information relevant to the Korean domestic market for rebar supplied by the applicant, the Commissioner denied the applicant the opportunity to supply the additional and alternative published pricing information contained in CONFIDENTIAL ATTACHMENT A prior to giving the Minister the report under s.269ZHF.

Given that the Commissioner relied on the applicant's *…published pricing information relevant to the Korean domestic market for rebar…* for the purpose of considering its *Application for the continuation of a dumping and/or countervailing notice*[14], and making his decision to initiate the relevant inquiry under s.269ZHD, then it was reasonable for the applicant to conclude that the Commissioner did not consider himself precluded from considering the published pricing information for the purpose of deciding on the recommendations to be made to the Minister in the Commissioner's report under s.269ZHF(3). If the Commissioner's state of mind concerning the admissibility of the previously supplied published pricing information had changed to such a degree between the decision to initiate the application, and the recommendation to the Minister, then the dictates and norms of procedural fairness would require the Commissioner, at a minimum, to inform the applicant of that change, and provide a timely opportunity to supply additional or alternate published pricing information.

The fact that the ascertained export price information is 'verified' does not justify its use by the Commission for the purpose of making the adjustment when it is by any measure, irrelevant information for the purpose of ascertaining the normal value. The comments of the Dispute Settlement Body cited above, put this contention beyond doubt. Furthermore, the Panel should not

[13] REP 546, p. 42.
[14] EPR Folio No. 546/001.

lose sight of why the Commission was unable to ascertain the Korean exporter's normal value by the *conventional* legislative means:

> *…the Commission was not satisfied of:*
>
> - *the completeness, relevance and accuracy of a portion of Daehan's sales of like goods on the domestic market; and*
> - *the completeness, relevance and accuracy of Daehan's CTMS in respect of the goods and like goods.*[15]

Applied here the correct or preferable decision would be to ascertain the normal value for the Korean exporter, Daehan, under s.269TAC(6), having regard to all relevant information: the verified normal value last determined by the Minister in respect of Daehan in Review 486/489 adjusted by the movement in the published pricing information relevant to the Korean domestic market for rebar between the review period relevant to Review 486/489 and the current inquiry period, either by reference to the information supplied by the applicant in its *Application for the continuation of a dumping and/or countervailing notice*[16], or CONFIDENTIAL ATTACHMENT A.

The Panel has authority or power to review a decision *…which is infected with an incurable breach of procedural fairness*: *Downer Utilities Australia Pty Ltd v Commissioner of the Anti-Dumping Commission [2019] FCA 1190* at pp. 23-24, per Steward J. Applied here, the Panel is capable; as Panel Member Blumberg decided in *ADRP Report No. 107*;[17] of relying on a Reinvestigation Report that has taken into consideration information that was not 'relevant information':

> *I agree with the ADC's legal analysis, referred to above, that it is not limited to considering "relevant information" as defined in s.269ZZK(6) in preparing a Reinvestigation Report under s.269ZZL(2). It is reasonably clear from the terms of s.269ZZK, in particular s.269ZZK(4A), that the Review Panel must have regard to such a report, irrespective of whether the report contains information that is not 'relevant information'. Moreover, the requirement in s.269ZZK(4) that the Review Panel have regard only to relevant information is expressed to be subject to subsection (4A) which, in turn, requires the Review Panel to have regard to the Commissioner's Reinvestigation Report. Indeed, the language of 'must' in subsection (4A) makes it clear that the Commissioner's Reinvestigation Report is a mandatory relevant consideration.*[18]

Therefore, the Panel, in this matter also, is capable of curing the Commission's breach of procedural fairness by requiring the Commissioner to reinvestigate the calculation of the normal value for the Korean exporter, Daehan adjusted by the movement in the published pricing information relevant to the Korean domestic market for rebar between the review period relevant to Review 486/489 and the current inquiry period, by reference to the information supplied by the applicant in its *Application for the continuation of a dumping and/or countervailing notice*[19], or CONFIDENTIAL ATTACHMENT A.

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[15] SEF 546, p. 38.
[16] EPR Folio No. 546/001.
[17] ADRP Report No. 107, *Ammonium Nitrate Exported to Australia from the People's Republic of China, Sweden and the Kingdom of Thailand*, July 2020
[18] Original fn 267: See *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 39-41.
[19] EPR Folio No. 546/001.

**Ground 2:**

**The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that for the purposes of s.269TAB(3) the export price of the goods exported to Australia by 'uncooperative and all other exporters' from Korea could be ascertained by reference to the ascertained export price specific to Daehan in this inquiry period. This finding is not supported by the terms of the provision under which it was purported to be made, as it does not have regard to 'all relevant information' within the meaning of the provision.**

In REP 546, the Commissioner recommended to the Minister that *…[t]he export price for uncooperative and all other exporters from Korea was determined having regard to all relevant information under section 269TAB(3). Specifically, the Commission had regard to the ascertained export price for Daehan in this inquiry.*[20]

This is not the correct or preferable decision, as the Commissioner is capable of access to the Australian Border Force's (**ABF**) import database, which provides the most reliable and relevant information it possesses in relation to exports of the goods from uncooperative exporters over the inquiry period; containing detailed importation data from import declarations made by importers to the ABF.

The correct or preferable decision would be for the Commissioner to recommend to the Minister that the export price for uncooperative and all other exporters from Korea be determined having regard to all relevant information under s.269TAB(3), specifically the weighted average Free On Board (**FOB**) export price declared by importers of the goods over the review period from Korean uncooperative exporters from the ABF import database.

**Ground 3:**

**The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that for the purposes of s.269TAC(6) the normal value of the goods exported to Australia by 'uncooperative and all other exporters' from Korea could be ascertained by reference to the ascertained normal value specific to Daehan in this inquiry period. To the extent that the ascertained normal value specific to Daehan is revoked and replaced by the Panel, it must also be revoked and replaced for 'uncooperative and all other exporters' from Korea.**

In the event that the Panel recommends that the normal value for Daehan be revoked and a new normal value be ascertained for Daehan under s.269TAC(6), then the Panel will further need to recommend that the normal value for all other exporters of the goods under s.269TAC(6) also be revoked and a new normal value be ascertained to take into account the new normal value determined for Daehan, to the extent necessary.

[20] REP 546, p. 42.

**Ground 4:**

**The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that for the purposes of s.269TAC(1) the normal value of the goods exported to Australia by NatSteel Holdings Pte Ltd (NatSteel) could be ascertained by reference, in part, to sales of goods not produced in Singapore. The Commissioner also included sales of such goods in his low volume assessment finding under s.269TAC(14) and his determination of selling, general and administration (SG&A) costs under s.269TAC(2)(c)(ii). None of those findings are supported by the terms of the provisions under which they were purported to be made.**

Section 269TAC(1) reads in relevant part:

> *Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export*

The inclusion of sales of goods imported into Singapore in the assessment of normal value is contrary to the long established legal principle that all words in a statute must be given some meaning and effect[21]. Contrary to that principle the action of the Commissioner renders superfluous the word "home" in s.269TAC(1) because effectively the limiting adjective has been ignored and the subsection has been interpreted to apply to all like goods sold for consumption in the country of export.

In our view "home" in the context of the subsection connotes a market comprising sales of goods produced domestically. Support for that view can be drawn from a number of sources including the Oxford English Dictionary which defines "home market" as:

> *A market for goods, products, etc., in the country or region in which they are produced.*

(emphasis added)

That construction is also consistent with Article VI of the *General Agreement on Tariffs and Trade 1994* (**GATT**) which provides in part:

> *1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products is to be condemned…* (emphasis added)

This original internationally recognised description of the price comparison exercise to be undertaken for the purpose of anti-dumping regulation clearly establishes that normal value is to be ascertained for the products of the exporting country, not for goods produced elsewhere. Consistent with this approach, Article 2.2 of the ADA when identifying the sales that may be used to assess normal value in a variety of circumstances refers on two occasions to …*sales …in the domestic market of the exporting country*… and the phrase is repeated in Article 2.2.1. Again, the inclusion of the qualifying adjective "domestic" would be superfluous if the contracting parties had intended to permit sales of goods produced in a country other than the exporting country to be included in calculations of normal value. The inutility resulting from the Commissioner's interpretation conflicts with the general rules of treaty interpretation and Australia's international obligations.

[21] *Commonwealth v Baume (1905) 2CLR 405 at 414.*

The Commissioner's approach to assessing normal value under s.269TAC(1) would inevitably conflict with any normal value assessments that need to be undertaken by reference to cost of production under s.269(2)(c)(i) which, incontrovertibly, requires production costs to be calculated by reference only to goods produced in the country of export. Further inconsistencies are manifest in the Commissioner's peremptory and erroneous inclusion of the cost of imported goods in calculations of SG&A costs and the low volume formula, while correctly excluding the cost of imported goods from OCOT calculations. The end result is an interpretative gallimaufry devoid of any unifying principle.

In order to restore such a principle we request that the Panel sets aside the Commissioner's assessment of normal value and undertakes a fresh assessment that excludes like goods imported into Singapore by NatSteel from all calculations relevant to the ascertainment of normal value.

***Ground 5:***

**The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that for *the purposes of s.269TAC(8) the normal value of the goods exported to Australia by NatSteel could be adjusted by both (a) a domestic credit terms expense, and (b) domestic factoring costs. This finding is not supported by the terms of the provision under which it was purported to be made.***

In REP 546, the Commissioner concluded that:

> *The Commission does not consider that the operation of the factoring arrangement alters the payment terms between NatSteel and its customers as indicated on the sales invoice. The Commission therefore considers that the adjustment to normal value for domestic factoring costs is independent of an adjustment for domestic credit terms and each is warranted.*[22] (emphasis added)

With respect, this misconstrues the operation of factoring arrangements: domestic sales are paid by the 'factor' on terms less than the domestic payment terms endorsed on the sales invoice. Therefore, it is *not* possible to claim a downward adjustments to the normal value under s.269TAC(8) for *both* "domestic credit terms" *and* "domestic factoring costs". It must be one or the other. We fail to see how both an adjustment for "domestic credit terms" and "factoring costs" may be made when domestic invoice values are paid (by the factor) on or near cash terms, albeit at a discount (i.e. the factoring costs).

The correct or preferable decision would be to make an adjustment to the normal value under s.269TAC(8) for "domestic credit terms" on sales transactions that were not subject to earlier payment by the 'factor', and "domestic factoring costs" on sales that were subject to the factoring arrangement, and therefore paid on terms less than the period (days) endorsed on the sales invoice.

[22] REP 546, p. 47.

**Ground 6:**

**The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that for the purposes of s.269TAC(6) the normal value of the goods exported to Australia by 'uncooperative and all other exporters' from Taiwan (except Power Steel Co. Ltd (Power Steel)) could be ascertained by reference, in part, to the movement in the ascertained export prices specific to 'all other exporters' between the review period relevant to Review 489 and the current inquiry period. This finding is not supported by the terms of the provision under which it was purported to be made, as it is not 'relevant information' within the meaning of the provision.**

In REP 546, the Commissioner upheld his preliminary finding in SEF 546 that:

> *The Commission has calculated the normal value for the inquiry period based on the normal value of all other exporters determined in ADRP Report 108 and has made an adjustment with reference to what it considers to be the most reliable information at hand, namely the movement in the ascertained export price for 'all other exporters' from Taiwan in the Review 489 period (which relied on the verified export price of Wei Chih) and the export price calculated for the current inquiry period (from the ABF import database).*[23]

In response to SEF 546, the applicant opposed the Commissioner's method of calculating the adjustment to the normal value last ascertained. The applicant contends that calculating an adjustment to the normal value based on movement in the ascertained export prices of the exporter is not the correct or preferable decision.

At the outset it is important to observe that the Commission has been unable to verify the normal value for the Taiwanese exporters on the basis of non-cooperation in this inquiry. Without the cooperation of the Taiwanese exporters the subject of this inquiry, the Commission has sought to ascertain the normal value under subsection 269TAC(6).

The applicant, again, refers to its comments and observations concerning the similar approach applied to determining the normal value for the Korean exporter, Daehan, above (refer Ground 1). In summary, the same conclusion must be drawn that, in light of the comments of the Panel of the WTO Dispute Settlement Body in *Australia – Anti-Dumping Measures on A4 Copy Paper*, the proposed approach does not support the correct or preferable decision being made by the Minister as there is no evidence to support the conclusion that changes in the price of sales into the export market are comparable, indicative, or indeed, relevant, to changes to the price of sales into the exporter's domestic market.

The correct or preferable view is for the Commissioner to make a recommendation to the Minister based on available, published price surveys of domestic Taiwanese rebar prices as the basis to adjust any relevant, but historic, normal value information for the exporters. An example of such information was provided by the applicant in its original application relating to this inquiry in support of the industry member's estimate of normal values and changes across the life-cycle of the measures.[24]

[23] REP 546, p. 52.
[24] EPR Folio No. 546/001 at CONFIDENTIAL ATTACHMENT 1.2.

When a comparison of the average monthly published prices for rebar sold into the Taiwanese domestic market during the review period for *Review No. 489* (1 July 2017 to 30 June 2018)[25] to the average monthly published Taiwanese domestic rebar prices for the 'inquiry period' (1 January to 31 December 2019),[26] is taken, the change across the two periods was a **0.6 per cent decrease** in Taiwanese domestic rebar prices.

In contrast, the effect of the differences in the prevailing conditions of competition in each market and the existing relationship between price and cost were pronounced during these two reference periods – weighted average export prices to Australia increased by 0.2 per cent and (TWD denominated) scrap prices decreased by 17.7 per cent.[27] As such, the evidence supports the conclusion that movements in export prices and costs are not comparable, indicative or relevant to movements in domestic prices between the two reference periods, and as such form no lawful or reasonable basis for adjustment.

Therefore, the correct or preferable decision would be for the Commission to adjust the normal value ascertained in *Review No. 489* with the published survey of Taiwanese domestic rebar price information previously supplied to the Commission by the applicant.

However, in REP 546, the Commissioner did not recommend an ascertained normal value to the Minister adjusted by the change in the previously supplied published survey of Taiwanese domestic rebar price information, stating that:

> *The Commission did not use this pricing information as the basis for making a timing adjustment to historical normal values because the publisher of that information has previously stated that it does not consent to its use by the Commission.*
>
> *The Commission does not have any other published pricing information relevant to the Taiwanese domestic market for rebar. The Commission therefore considers the approach it has adopted in determining the normal value for Taiwan to be the most appropriate approach, as it is based on verified data which is closely related to the Taiwanese exporters.*[28] (emphasis added)

The Commissioner did not inform the applicant that he did *…not have any other published pricing information relevant to the Taiwanese domestic market for rebar...* and that he considered that he *…did not have consent to use…* the published pricing information supplied by the applicant. By so doing, the Commissioner denied the applicant the opportunity to supply the Commissioner with additional and alternative published pricing information. An example of additional and alternative published pricing information that the applicant would have provided the Commissioner is contained in CONFIDENTIAL ATTACHMENT B.

[25] Domestic sales values for the period 1 June 2017 to 31 May 2018 have been taken in order to permit a proper comparison to the prices for goods exported during that period, but not entered for home consumption, generally, a month later (i.e. corresponding with the review period, 1 July 2017 to 30 June 2018.
[26] Domestic sales values for the period 1 December 2018 to 30 November 2019 have been taken in order to permit a proper comparison to the prices for goods exported during that period, but not entered for home consumption, generally, a month later (i.e. corresponding with the 'inquiry period', 1 January to 31 December 2019.
[27] EPR Folio No. 546/027 at CONFIDENTIAL ATTACHMENT A.
[28] REP 546, p. 52.

By not informing the applicant that the Commissioner did not intend to use the published pricing information relevant to the Taiwanese domestic market for rebar supplied by the applicant, the Commissioner denied the applicant the opportunity to supply the additional and alternative published pricing information contained in CONFIDENTIAL ATTACHMENT B prior to giving the Minister the report under s.269ZHF.

Given that the Commissioner relied on the applicant's …*published pricing information relevant to the Taiwanese domestic market for rebar…* for the purpose of considering its *Application for the continuation of a dumping and/or countervailing notice*[29], and making his decision to initiate the relevant inquiry under s.269ZHD, then it was reasonable for the applicant to conclude that the Commissioner did not consider himself precluded from considering the published pricing information for the purpose of deciding on the recommendations to be made to the Minister in the Commissioner's report under s.269ZHF(3). If the Commissioner's state of mind concerning the admissibility of the previously supplied published pricing information had changed to such a degree between the decision to initiate the application, and the recommendation to the Minister, then the dictates and norms of procedural fairness would require the Commissioner, at a minimum, to inform the applicant of that change, and provide an opportunity to supply additional or alternate published pricing information.

Applied here the correct or preferable decision would be to ascertain the normal value for the uncooperative and all other exporters from Taiwan under s.269TAC(6), having regard to all relevant information: the verified normal value last determined by the Minister in respect of Wei Chih in Review 489 adjusted by the movement in the published pricing information relevant to the Taiwanese domestic market for rebar between the review period relevant to Review 489 and the current inquiry period, either by reference to the information supplied by the applicant in its *Application for the continuation of a dumping and/or countervailing notice*[30], or CONFIDENTIAL ATTACHMENT B.

As noted above in support of Ground 1, the Panel has authority or power to review a decision …*which is infected with an incurable breach of procedural fairness*: *Downer Utilities Australia Pty Ltd v Commissioner of the Anti-Dumping Commission [2019] FCA 1190* at pp. 23-24, per Steward J, which may be cured by requiring the Commissioner to reinvestigate the calculation of the normal value for the uncooperative and all other exporters from Taiwan adjusted by the movement in the published pricing information relevant to the Taiwanese domestic market for rebar between the review period relevant to Review 486/489 and the current inquiry period, by reference to the information supplied by the applicant in its *Application for the continuation of a dumping and/or countervailing notice*[31], or CONFIDENTIAL ATTACHMENT B.

[29] EPR Folio No. 546/001.
[30] EPR Folio No. 546/001.
[31] EPR Folio No. 546/001.

**Ground 7:**

**The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that for the purposes of s.269ZHF(2), the Commissioner ought to have been satisfied that the expiration of the measures applicable to exporters of the goods from Singapore would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti dumping measure is intended to prevent. The Commissioner's reasons for not so finding, are not reasonable, relying as they did on an unsound determination of the dumping margin, unsound analysis of the exporter's trade and export pricing behaviour and the recurrence of material injury following the inquiry period.**

In REP 546, the Commissioner indicated that:

> *…the Commission considers it unlikely that in the absence of measures, Singapore will commence dumping at margins that are injurious to the Australian industry.*[32]

The dumping margin for NatSteel determined was 0.6 per cent.

In reaching that conclusion, the Commission was significantly influenced by the finding that:

> *The Commission found exports from Singapore during the inquiry period to be at dumped prices, albeit the calculated dumping margin was negligible. Further, the Commission notes that duty assessments conducted in respect of NatSteel's exports after the imposition of measures have determined margins of a comparable degree, and in some cases, negative margins and a full refund of the IDD paid.*[33]

This is all premised on a conclusion that its ascertained export price (as determined) is undumped, and that the ascertained normal value was correctly determined under s.269TAC(1) in spite of the objections of the applicant to the correctness of the Commission's approach (refer Ground 4, above). It is the applicant for review's contention that:

- the calculation of the negative dumping margin; and
- the ascertained normal value,

are unsound as they are not based on a normal value correctly determined under law.

Therefore, to the extent that the Minister's decision relies on the Commissioner's determination of the normal value incorrectly under s.269TAC(1), and that the dumping margin calculated for this exporter is no longer negligible, but is instead found to be non-*de minimis*, then the Minister's decision not to secure the continuation of the anti-dumping measures currently applying to rebar exported to Australia from Singapore by NatSteel or other exporters is not the correct or preferable decision.

However, even if the dumping margin calculated for NatSteel continues to be negligible, then the Minister's decision not to secure the continuation of the anti-dumping measures currently applying to Singapore is not the correct or preferable decision because the Commission's determination of

[32] REP 546, p. 83.
[33] REP 546, p. 82.

the likelihood of recurrence of dumping by NatSteel in the absence of measures has ignored the analysis provided by the applicant in its submission in response to SEF 546, specifically that:

> *…the degree of price premium of NatSteel above any other exporter the subject of these measures has progressively eroded in the final two fiscal quarters of the 'inquiry period', and in the first two fiscal quarters in the period immediately following the 'inquiry period'.*[34]

And that *…[s]pecifically in the June 2020 quarter, NatSteel's price premium over the next lowest FOB export price was only 2.5 per cent, or within its current 3.0 per cent dumping margin. This is consistent with InfraBuild's assertion that since the end of the 'inquiry period', NatSteel's average export prices declined by 9.9 per cent*.[35]

Secondly, the Commission concedes that the measures have been effective at suppressing dumped exports by Singapore:

> *…**prior to measures**, Singaporean export prices were **below the average of other countries' export prices** (not subject to measures). **Following measures**, Singaporean export prices were above that of other countries' export prices.*[36]

The applicant asserts that this historical data indicates NatSteel's propensity to export rebar to Australia at dumped prices in the absence of measures, and demonstrates the effectiveness of the current measures. When viewed alongside concurrent export price data available, this clearly discredits any view that the expiration of measures against NatSteel will not result in a recurrence of dumping and injury.

Thirdly, as to the conclusions drawn from the Commission's price undercutting analysis that *…Singapore has been able to export higher volumes than the other subject countries and at a price higher than the other subject countries without undercutting the Australian industry…*[37] the applicant's submission *…that an absence of undercutting in the context of an IPP pricing model in fact confirms the existence of price injury caused by NatSteel…*[38] was overlooked by the Commission in its analysis. Clearly, if the Commission is observing price depression and price suppression, with respect to sales of the like goods to NatSteel's sole Australian customer, by the Australian industry, then it is unlikely that you will also observe price undercutting. The fact that NatSteel's prices to the Australian customer, were above those of InfraBuild simply suggests that InfraBuild successfully made sales to this customer when it sufficiently depressed and suppressed its prices, and suffered volume injury; through lost sales to NatSteel; when it did not. These "lost sales" will not appear in the Commission's price undercutting analysis, as they did not register as revenue, but remained "price offers" by InfraBuild to NatSteel's Australian customer.

The following analysis contained in its submission in response to SEF 546,[39] compares the net invoice price of sales of specific model control code (**MCC**) categories to NatSteel's sole Australian customer compared to all other customers for the same, specific MCC across the 'inquiry period'.

[34] EPR Folio No. 546/027, p. 20.
[35] EPR Folio No. 546/027, p. 20.
[36] REP 546, p. 82.
[37] REP 546, p. 82.
[38] EPR Folio No. 546/027, p. 20.
[39] EPR Folio No. 546/027, p. 21.

The above analysis, indicates the [redacted] experienced by InfraBuild on its sales of rebar on a model-by-model basis. As a significant source of supply for this importer; other than InfraBuild; is NatSteel, the [redacted] experienced by InfraBuild could only have been caused by NatSteel. Furthermore, as NatSteel only supplies this importer, the impact of the injury is confined to this mutual customer (of both NatSteel and InfraBuild). Therefore, it is reasonable to assume that in the absence of NatSteel's "price offers", the Australian industry would have been able to achieve [redacted] prices it achieved on a weighted average basis to all its other customers. The quantum of injury, in the form of lost profit, suffered by InfraBuild is material across the 'inquiry period', $[redacted] for just this customer.

Therefore, the correct or preferable decision would be for the Commission to recommend to the Minister that the measures be continued against NatSteel and all other exporters of the goods from Singapore.

**Ground 8:**

**The reviewable decision of the Minister set out in ADN 2020/111 is not the correct or preferable decision because it is based on a finding by the Commissioner in REP 546 that for the purposes of s.269ZHF(2), the Commissioner ought to have been satisfied that the expiration of the measures applicable to exporters of the goods from Taiwan (except Power Steel) would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti dumping measure is intended to prevent. The Commissioner's reasons for not so finding, are not reasonable, relying as they did on an unsound determination of a dumping margin and unsound analysis of the exporters' trade and export pricing behaviour following the inquiry period.**

In spite of the applicant's grounds for review under Ground 6 above, even if the Panel determines that the dumping margin calculated for uncooperative and all other exporters from Taiwan continues to be negative, then the Minister's decision not to secure the continuation of the anti-dumping measures currently applying to Taiwan is not the correct or preferable decision because the Commissioner fails to properly consider 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 the material injury that the anti-dumping measure is intended to prevent.

In REP 546, the Commission cites the following factors as leading *…the Commission to the view that the expiration of the measures applying to rebar exported to Australia from Taiwan would not be likely to lead to a continuation of, or recurrence of, dumping and the material injury that the measures are intended to prevent*:[40]

1. *"that Taiwanese exporters subject to these measures were not dumping in the current inquiry, with the dumping margin calculated to be negative 0.9 per cent"*

The fact that the Commission found *no dumping*, is not conclusive on the likelihood determination of recurrence of dumping, but rather evidence that the anti-dumping measures have achieved their stated objective. Indeed, Panel Member O'Connor makes this precise observation in *ADRP Decision No. 70*:

> *As to the significance of the Applicants' negative dumping margins throughout the inquiry period, neither the Anti-Dumping Agreement nor the Act requires revocation as soon as an exporter is found to have ceased dumping and the continuation of measures is not precluded a priori in any circumstances other than where there is present dumping.*[41]

2. *"The Commission did not find evidence of price undercutting by Taiwanese exports"*

This is not a compelling factor by the Commission's own admission (*…recognises the limitations of this analysis due to low volumes in the inquiry period*[42]), and should be negated.

[40] REP 546, p. 83.
[41] ADRP Decision No. 70, *Hot Rolled Coil Exported from Japan, the Republic of Korea, Malaysia and Taiwan* (April 2018), p. 13 at [48].
[42] REP 546, p. 83.

3. *"export prices for the relatively low volume of Taiwanese exports during the inquiry period exceeded that of the ascertained floor price by a material quantum"*

With respect, this analysis does not progress the Commission's assessment concerning recurrence of dumping, as it remains confined to the 'inquiry period' and subject to measures. The issue of the accuracy of the floor price; as a function of the ascertained normal value; is a matter for the Panel's review under Ground 6, above.

4. *"while the volume increased for exporters subject of these measures in the first two quarters of 2020, it was from a very low base in 2019, thus volumes were still comparatively insignificant*"

The increase in the volume by the subject exporters, is probative, positive evidence of the probability of recurrence, and should not be discounted.

5. *"Concerning pricing, the Commission found that the price of Taiwanese exports subject to the measures increased in the first two quarters of 2020 by 8.2 per cent"*

The Commission has failed to compare this reported price increase by Taiwanese exporters to overall market trends. In and of itself, a price increase is not dissuasive of a conclusion of recurrence, especially if that price increase is in the context of an overall increase in market price. In the context of an inquiry, going to the question of recurrence of dumping, the relevance of an increase in export price is tied to an assessment in changes in the contemporary normal value for the exporter.

Furthermore, given the subject Taiwanese exporters are currently subject to measures, an increase in observed export prices, is unremarkable. However, it does not follow that in absence of dumping, exporters of the goods from Taiwan will not seek a price advantage. This was recently identified by Senior Panel Member Fitzhenry as relevant to the question of recurrence:

> *In REP 504, the ADC found that "whilst the tender evaluation decision is impacted by a range of factors, price remains a consideration for power transformer purchasers".*[43] *Given this, it is reasonable to draw the conclusion <u>that dumped exports</u> by CG Power <u>in the future are likely to give it a price advantage in future tenders</u>.*[44]

Therefore, the correct or preferable decision would be for the Commission to recommend to the Minister that the measures be continued against uncooperative and all other exporters of the goods from Taiwan.

[43] Original fn 36: REP 504 section 7.6.8 at page 59.
[44] ADRP Report No. 119, *Power Transformers from the Republic of Indonesia and Taiwan*, August 2020, p. 32.