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 6 July 2021 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 (s 269ZZG(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.

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.

[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*.

PART A: APPLICANT INFORMATION

1. **Applicant's details**

Applicant's name: **Nervacero S.A. ("Nervacero")**
Address: **Barrio Ballonti, s/n 048510 Valle de Trapaga, Vizcaya, Spain**
Type of entity (trade union, corporation, government etc.): **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 the Minister decision under Section 269ZHG(1) of the Act to secure the continuation of anti-dumping measures that apply to Nervacero's exportation of steel reinforcing bar exported from Spain.

Under Section 269ZX of the Act an "interested party" is defined as including, amongst others, any person who is, has been, or is likely, to be directly concerned with the importation or exportation into Australia, or is or is likely to be directly concerned with the production or manufacture, of the goods the subject of the reviewable decision.

Nervacero is a manufacturer and has been an exporter, to Australia, of the goods to which the decision relates, namely steel reinforcing bar ("rebar"). Nervacero 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 601 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 regardless of the particular grade, alloy content or coating. Goods excluded from the measures are plain round bar, stainless steel and reinforcing mesh.

The following rebar is currently exempted from the measures following Exemption Inquiry Nos. 0070 and 0072:

- ***Ministerial Exemption Instrument No 2 of 2019 effective from 28 September 2018 exempted:***

  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

- ***Ministerial Exemption Instrument No 3 of 2019 effective from 9 November 2018 exempted:***

  Fully threaded hot-rolled prestressing steel reinforcing bar, in straight lengths, with a minimum yield strength of 885 MPa or greater, with a 26.5 mm, 32 mm, 36 mm, 40 mm or 50 mm diameter.

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

The goods are generally, but not exclusively, classified to the following tariff subheadings of 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 codes 01, 02, 04 and 42)**
- **7228.30.10 (statistical code 70)**
- **7228.30.90 (statistical code 40)**
- **7228.60.10 (statistical code 72)**

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

Anti-Dumping Notice (ADN) number: **Anti-Dumping Notice No 2023/004**
Date ADN was published: **21 February 2023**

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 2023/004

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 highlighted in yellow, and the document 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 12 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:**

All attachments provided in support of this application are: **Attachment 1 – ADN 2023/004;** **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 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:	**23 March 2023**

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 4 – Letter to ADRP re ML 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 and Resources

Anti-Dumping Commission

ANTI-DUMPING NOTICE NO. 2023/004

Customs Act 1901 – Part XVB

Steel reinforcing bar

Exported to Australia from the Hellenic Republic, the Republic of Indonesia, the Kingdom of Spain (by Nervacero S.A), Taiwan (by Power Steel Co. Ltd) and the Kingdom of Thailand

Findings of Continuation Inquiry No. 601

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

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 28 March 2022, into whether the continuation of the anti-dumping measures applying to steel reinforcing bar (rebar or the goods) exported to Australia is justified. The anti-dumping measures are in the form of a dumping duty notice for rebar exported to Australia from the Hellenic Republic, the Republic of Indonesia[1], the Kingdom of Spain (by Nervacero S.A), Taiwan (by Power Steel Co. Ltd) and the Kingdom of Thailand (Thailand).

The Commissioner's 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. 601* (REP 601).

I, ED HUSIC, Minister for Industry and Science, have considered REP 601 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of fact and law set out in REP 601.

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.

Under section 269ZHG(4)(a)(ii) of the Act, I **determine** that the dumping duty notice continues in force after 7 March 2023 (the specified expiry day) but that, after that day, the notice ceases to apply to exporters of the goods from Thailand.

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

[1] Excluding PT Ispat Panca Putera and PT Putra Baja Deli who are exempt from the measures.

requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 601 has been placed on the public record, available at www.adcommission.gov.au

Enquiries about this notice may be directed to the Case Manager by phone on +61 3 8539 2554 or by email investigations3@adcommission.gov.au

Dated this 20 day of FEBRUARY 2023

ED HUSIC
Minister for Industry and Science

In the Anti-Dumping Review Panel

23 March 2023

Application for review – continuation inquiry concerning steel reinforcing bar from Nervacero S.A., Spain

Nervacero S.A.

A Introduction

On 7 March 2022, Infrabuild (Newcastle) Pty Ltd ("Infrabuild") applied to the Anti-Dumping Commission ("the Commission") for the continuation of anti-dumping measures with respect to steel reinforcing bar

("rebar" or the "goods") exported from Spain (by Nervacero S.A), Greece, Indonesia, Taiwan (by Power Steel Co., Ltd) and Thailand. The dumping duties were originally imposed on 7 March 2018.[1]

Following Infrabuild's application, the Commission initiated a continuation inquiry on 28 March 2022 ("Inquiry 601").[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 Greece, the Republic of Indonesia (Indonesia), Spain (by Nervacero S.A.), Taiwan (by Power Steel Co. Ltd), and the Kingdom of Thailand (Thailand) is justified.*[3]

The Commission published the statement of essential facts for this inquiry ("SEF 601") on 18 November 2022.

At the conclusion of Inquiry 601, the Minister for Industry and Science ("the Minister")::

- declared under Section 269ZHG of the *Customs Act 1901* (Cth) ("the Act"), that he had decided to secure the continuation of the anti-dumping measures applying to rebar exported to Australia from the Kingdom of Spain (by Nervacero S.A.), the Hellenic Republic, the Republic of Indonesia,[4] and Taiwan (by Power Steel Co. Ltd); and

- determined that the dumping duty notice continues in force after 7 March 2023 but that, after that day, the notice ceases to apply to exporters of the goods from Thailand.

The recommendations of the Commission to that effect are contained in *Report No. 601 – Inquiry concerning the Continuation of Anti-Dumping Measures applying to Steel Reinforcing Bar exported to Australia from Greece, the Republic of Indonesia, Spain (by Nervacero S.A), Taiwan (by Power Steel Co. Ltd) and the Kingdom of Thailand* ("Report 601"). The Minister confirmed that in making his decision he had:

> *… considered REP 601 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of fact and law set out in REP 601.*

The decision of the Minister was made on 20 February 2023 and subsequently published on the Commission's website on 21 February 2023.[5]

Nervacero S.A. ("Nervacero") is the specific entity and the only Spanish exporter of the goods the subject of the measure and Inquiry 601. Exports from other Spanish exporters are subject to a different anti-dumping measure but are not subject to Inquiry 601 or the Minister's decision.

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1 ADN 2018/010.

2 ADN 2022/029, page 1.

3 ADN 2022/029.

4 Excluding PT Ispat Panca Putera and PT Putra Baja Deli who are exempt from the measures.

5 ADN 2023/004.

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

We now address the requirements of both the application form 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 - incorrect determination of the likelihood of dumping and material injury caused by Nervacero due to expiry of the measure

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

1 Applicable legal standard for expiry of measure and continuation inquiry

At the outset, we refer to the legal standard applicable to continuation inquiry under Section 269ZHF of the Act, which provides:

> *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]

Section 269ZHF gives effect to Australia's obligations under Article 11.3 of the Anti-Dumping Agreement ("the Agreement") which relevantly provides that:

> *…any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition…, unless the authorities determine,… that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.* [underlining supplied]

Assessment of "likely" requires the investigating authority to assess, based on positive evidence, whether expiry of the measure would "*more probabl[y] than not*" cause the continuation or recurrence of dumping and material injury as a result of the expiry/termination of the measure, and "*not simply if the evidence suggests that such a result might be possible or plausible*".[6]

In a more recent decision, a WTO Panel considered that an investigating authority may not rely solely on assumption or speculation when conducting a likelihood analysis,[7] and that the authority should establish the relationship or nexus between expiry of the measure and the continuation or recurrence of dumping and injury, "*such that the former 'would be likely to lead to' the latter*".[8] Further, that Panel Report also found that a determination would be inconsistent with the requirement under Article 11.3 of

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6 *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2),* [2009] FCA 838, paras 49 and 50; WTO Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 111

7 WTO Panel Report, *Pakistan – BOPP Film (UAE)*, para 7.543

8 Ibid, para 7.546

the Agreement if the investigating authority made the likelihood and nexus determination based on an assumption that:

> *…because dumped imports had decreased and the market share of the domestic industry had increased following the introduction of the anti-dumping duties, the opposite would happen upon removal of the duties.*[9]

That is, it would be contrary to the requirement under both Australian law and international jurisprudence, for an investigating authority to approach its tasks in the continuation inquiry with an assumption that if the lack of dumping and injury was the result of the measure, then "*this suggests that dumping will resume if the Measures are not continued.*"[10]

In our view, the Commissioner's determination in Report 601 failed to meet the legal standard with respect to both the assessments of the likelihood of dumping and the likelihood of material injury, in relation to exports from Nervacero.

We explore these issues in turn as follows.

2 Failure to establish "probable" recurrence or continuation of material injury resulting from expiry of the measure with respect to Nervacero

a No material injury

Firstly, Report 601's analysis of Infrabuild's economic condition does not show there is any current material injury caused by the goods subject to Inquiry 601. Report 601 states:

> *The Commission's analysis of the economic condition of the Australian industry in the inquiry period and since the measures found that the Australian industry has experienced improved performance in terms of the increased selling prices, profit and profitability.*[11]

During the inquiry period, and since then, Infrabuild has enjoyed some of its best-ever financial performance. Specifically, Report 601 finds:

- *The commission does not consider that InfraBuild has experienced a deterioration in its economic performance in the forms of reduced production or sales volume during the inquiry period;*[12]

- *…commission does not consider that InfraBuild has experienced a deterioration in its economic performance in the form of price depression or suppression during the inquiry period.*[13]

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9 Panel Report, *Pakistan – BOPP Film (UAE)*, para 7.608.

10 ADRP Report No. 130, para 120.

11 Report 601, at page 78.

12 Ibid, Section 6.4.4, at page 37.

13 Ibid, Section 6.5.1, at page 38.

- *…the commission…does not consider that InfraBuild has experienced a deterioration its economic performance in the form of reduced profit and profitability during the inquiry period, nor in the period since the measures;*[14]
- *…with the exception of 2020 capital investment increase in each year;*[15]
- *…with the exception of 2020 revenue increased in each year;*[16]
- *…InfraBuild's ROI has improved in each year;*[17]
- …[Infrabuild's] *productivity has been reasonably constant, with an improvement during the inquiry period such that the productivity was at the highest level achieved;*[18]
- *…InfraBuild's inventory turnover has increased in each year;*[19]
- *Capacity utilisation decreased in 2020 before improving during the inquiry period…*[20]

These economic indicators tell against the proposition that material injury caused by exports from Nervacero and other exports subject to the measure would be likely to continue or recur, as a matter of probability.

Report 601 does not find that Infrabuild is presently suffering material injury. Indeed, the opposite is the case. The suggestions in the report that the Australian industry is likely to be weakened by other events in the future are for the most part unrelated to dumping. They are therefore "other factors" that would in a normal investigation be set-up *against* the proposition that material injury has been caused to an Australian industry.

Report 601 states that the Australian industry "*continues to be susceptible to competition from imported goods in the Australian market*". Susceptibility to competition is not a form of injury. Continuing dumping duties to prevent competition, which is what appears to have happened here, is an obvious abuse of the anti-dumping system.

Further, there has been a failure on the part of the Commissioner, in making his recommendations, to consider a factor that the Minister has expressly directed must be taken into account with respect to what is quite obviously a healthy industry. The *Ministerial Direction on Material Injury*[21] directs the Commission to take into account the financial condition of an Australian industry when assessing the materiality of injury.

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14 Report 601, Section 6.6.1, at page 39.

15 Ibid, Section 6.7.2, at page 40.

16 Ibid, Section 6.7.3, at page 40.

17 Ibid, Section 6.7.4, at page 41.

18 Ibid, Section 6.7.8, at page 42.

19 Ibid, Section 6.7.10, at page 42.

20 Ibid, Section 6.7.5, at page 41.

21 See Australian Customs Dumping Notice No 2012/24.

> *In considering the circumstances of each case I direct that you consider that an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.*

This direction must be acted upon by the Commission and cannot be ignored. The failure to do so in this case must be rectified in any assessment by the Review Panel of whether the decision of the Minister was *"correct or preferable"*. Otherwise, the Minister will be placed in the position of having failed to consider something that the Minister has directed to the Commission as being important to the task of making recommendations about the likelihood that injury is material, or in this case would be material in the future.

Further, *"susceptib[ility] to competition"* is not what the "*anti-dumping measure is intended to prevent*". Instead, the measure was imposed to address material injury caused by exports that were imported with greater than *de minimis* dumping margins and were not negligible in volume, as found during the original investigation period.

b No probable injury associated with Nervacero or subject goods

Secondly, as Nervacero pointed out in its submission to the Commission during Inquiry 601, and as confirmed by the data in Report 601, the Australian market for rebar has fundamentally changed since the imposition of the anti-dumping measure in 2018. We refer to the following features of the composition of the Australian market for rebar during the inquiry period:

- *import volumes from the subject countries reduced significantly…94.7% of import volumes are from other sources (not subject to any measures)*[22]
- *lowest priced exports from countries currently not subject to measures*[23]
- *exports from countries not subject to measures increased at the expense of exports by countries currently subject to measures*[24]
- *largest sources of imports during the inquiry period were from (in alphabetical order) Indonesia (exporters not subject to measures), Italy, Malaysia, Poland, Singapore and Turkey*[25]
- *Australian industry and exports from exporters not subject to measures accounted for around 99% of the Australian market*[26]

Report 601 offers no reasoned explanation as to whether or why such market condition is likely to change as a result of expiry of the measure. Instead, Report 601 considers that the likelihood threshold is met because:

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22 Report 601, page 63.

23 Ibid, page 78.

24 Ibid, page 34.

25 Ibid.

26 Ibid, page 77.

- the Australian industry is and will likely to continue face competition from imports not subject to the measure;[27]

- it would be necessary for subject goods to be exported at the same price as imports not subject to the measure;[28]

- expiry of the measure could *"increase the presence of dumped goods"*, therefore increasing competition.[29]

These views are made on assumptions that the subject goods will be exported to Australia at both dumped prices and at volumes that are large enough to cause material injury to the Australian industry. However Report 601 does not explain why this is likely to occur as a matter of probability.

Report 601 equates competition with material injury. It conflates the *exception* to expiry of the measure, with an unjustified *mandate* to continue the anti-dumping measure, so as to shield the Australian industry from any potential increase in competition from goods currently subject to the measure. Effectively, Report 601 recommends that the measure should be continued because the Australian industry is already subject to competition from imports not subject to the measure,[30] because exports from Nervacero had been exported at dumped price before[31] and would need to be dumped in order to compete with imports not subject to the measure.[32] This collection of irrelevant points and unsafe assumptions apparently leads Report 601 to conclude that allowing the expiry of the measure would most likely result in a recurrence of dumping and material injury:

> *The commission considers that despite the changes in the pattern of trade resulting from the measures, the conditions of competition in the Australian market have not changed since the measures. As such, the commission considers that price will continue to be the key determinant of purchaser behaviour, and would expect that if the measures were to expire dumped goods will again enjoy a competitive price advantage that will see volumes move toward exporters of dumped goods.*[33] [underlining supplied]

This is incoherent. It betrays that the conclusion reached by Report 601 was based entirely on assumptions, presumptions, slight possibility, and low plausibility. The Commission's "expectation" has no probative force. It is wildly inconsistent with the legal probability standard under Section 269ZHF(2) of the Act and is not supported by the evidence on the record.

Despite Report 601's repeated references to the term "likely", it offers little evidence or reason to support its findings on the basis of probable future occurrences.

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27 Report 601, pages 43 and 78

28 Ibid, page 78.

29 Ibid

30 Ibid, page 87

31 Ibid, page 86

32 Ibid, pages 77 and 78

33 Ibid, page 77.

In answering the question *"is material injury likely to continue or recur"*, Report 601 makes separate findings with respect to *"likely effect on price"*,[34] *"likely effects on volumes"*[35] and *"likely effects on profits"*.[36] None of those analyses suggest that the likely effect of the expiry of the measure will be the continuation or recurrence of material injury. Nervacero addressed each of these issues in its submission in response to SEF 601. However, Nervacero's comments appear to have been ignored, with Report 601 simply repeating the preliminary outcomes announced in SEF 601.

We believe that Nervacero's submissions to the Commission had great merit and force. Accordingly, we now refer to the following comments made in Nervacero's submission to the Commission for the Review Panel's consideration.

In relation to the *"likely effect on price"* finding, Nervacero submitted:

> *The price "cluster" suggests that imported products are more or less similarly priced. This is not surprising, given that a single supplier, being Infrabuild, holds 88% of the total market share, while the rest mostly compete with each other for that part of the market held by imports. This provides no guidance on the likely effect of the expiry of the measure itself. Further, this price cluster concept suggests, at best, that in order to enter the market a new entrant would also have to offer the goods at a similar price level. However, Nervacero is commercially disincentivised to compete in a lower priced market, and there are significant disadvantages for it in doing so. Even with the measure removed, and even if supply became available at better prices than it could achieve in European markets, Nervacero would still be disadvantaged by the customs tariff, which is not applicable to the main import sources, such as Turkiye, Indonesia, Malaysia and Singapore.*[37]

In relation to the *"patterns of trade"* finding, Nervacero submitted:

> *The pattern of trade analysis merely indicates that the import market has been dominated by sources not subject to the current measure. There is no indication that "price sensitivity" in the Australian market has been reinforced. We recall Infrabuild's advice that it only applies an IPP practice with respect to straight products, and the fact that Infrabuild has become more price competitive than imports, while achieving record high profit and revenue.*
>
> *Further, expiry of the measure itself does not mean that there is "no barrier" against Nervacero re-entering the Australian market. There is a multitude of barriers, including the high cost of production, logistical barriers, customs tariffs, competition from existing suppliers at lower cost and prices, as well as the disincentive provided by the higher prices in the Spanish and regional market closer to Spain. Would a lower barrier associated with the expiry of measure against Nervacero create a "deflationary impact"? A deflationary impact could only be caused*

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34 Report 601, section 8.6.1

35 Ibid, section 8.6.2

36 Ibid, section 8.6.3

37 Nervacero submission dated 8 December 2022 ("Nervacero SEF comment"), page 19.

> *by a competitor introducing goods into the subject market at lower prices. That outcome, as we have been at pains to draw-out in this submission, is not at all likely.*[38]

In relation to the *"likely effects on volumes"* finding, Nervacero submitted:

> *These too, say nothing about what evidence there is to infer that expiry of the measure would be likely to lead to recurrence of injurious dumping from Nervacero. The underlined "expectation" is not supported by evidence. The evidence pertaining to the market and operational conditions faced by Nervacero, as discussed in Part B of this submission, point to the opposite conclusion. SEF 601's opinion that if exports subject to the measure capture market share at the expense of other exporters, suggests that the competition is more likely to be between imported products rather than with the Australian industry. The opinion that the Australian industry might be "vulnerable" is speculative and conclusory.*[39]

The Commission's *"likely effect on profits"* finding comprised only of the following:

> *Profit and profitability rely on price and volume as inputs. Based on the analysis in sections 8.6.1 and 8.6.2 the Australian industry will be impacted by reduced profits and profitability from dumped exports in the event that measures expire.*

Nervacero submitted, and submits again, that this statement is conclusory and is not supported by any evidence. Indeed, we draw the Panel's attention to the fact that, during the inquiry period, the Australian industry's profit and profitability performance has been nothing but extraordinary, and is not indicative of any vulnerability:[40]

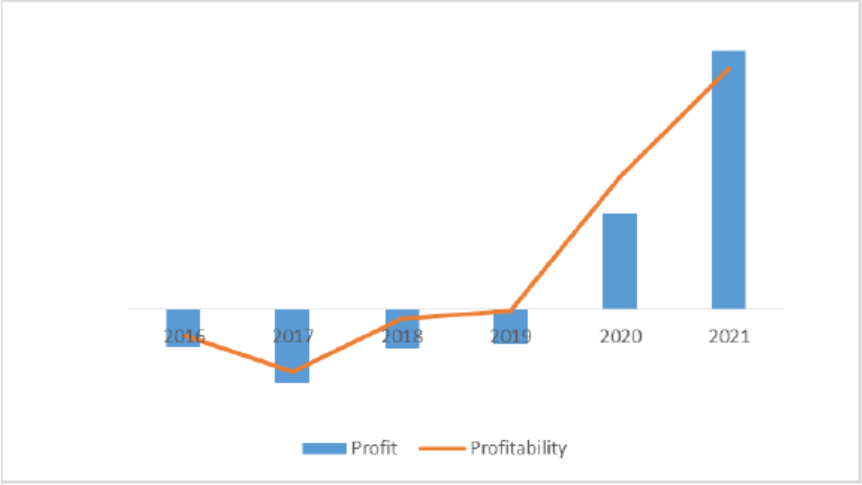

Figure 7 - Profit and profitability (%)

38 Nervacero SEF comment, page 20

39 Ibid, page 21

40 Report 601, Figure 7, page 39.

The lack of any reasoned and evidence-based "likelihood" analysis highlights the unreasonableness in Report 601's finding that the material injury is likely to continue or recur and that the measure should be continued.

c Unreasonable and improper disregard of the Australian industry's changed conditions

In contrast to the lack of positive evidence showing that expiry of the measure will *probably* result in recurrence of material injury caused by exports from Nervacero, Nervacero presented ample evidence which indicates that recurrence of material injury caused by Nervacero is *improbable* and *unlikely*. In particular, Nervacero pointed out that, unlike the circumstances during the original investigation period, the Australian industry has been transformed through GFG Alliance's acquisition of Arrium OneSteel, and Infrabuild's implementation of a customer loyalty scheme:

> *Since the anti-dumping measures were first put in place in 2018, the Australian market conditions have shifted, which coincided with the GFG Alliance's acquisition of Arrium OneSteel, and its transition to Liberty OneSteel and now Infrabuild.*
>
> *The key change is Infrabuild's implementation of a "loyalty" scheme that locked in customer's demand for a commitment level of between 80 to 95 percent of their annual requirements, in exchange for rebates. The larger the percentage the more attractive the rebates become. This scheme is only offered to "Tier One" customers who are larger scale customers that are qualified to buy directly from Infrabuild. These are also the main group of customers that could use the large coils offered by Nervacero. Nervacero used to offer its products to these Tier One customers during the period of the original investigation 418, being 1 April 2016 to 31 March 2017.*
>
> *As a result of Infrabuild's loyalty scheme, Australian customers are disincentivised in purchasing products from Nervacero, and could only do so to the extent that the purchase of non-Infrabuild products would not affect its quantity commitments to Infrabuild. As a result, Nervacero no longer receives any inquiries from Tier One customers and only maintains communication with [CONFIDENTIAL TEXT DELETED – distribution channel].*
>
> *Nervacero understands that [CONFIDENTIAL TEXT DELETED – distribution channel] customers are basically "Tier Two" customers who cannot source the goods from Infrabuild because they are not qualified for direct purchase from Infrabuild. Therefore the distribution channel via [CONFIDENTIAL TEXT DELETED – distribution channel] is not in direct competition with Infrabuild. This change is underpinned by strong growth in both steel prices demand in Australia and globally in recent years, a trend that is likely to continue.*[41]

In its SEF comments, Nervacero further explained the changes to the Australian market and the competitive landscape, as follows:

> *In other words, the objective and the effect of the Advantage Program is to incentivise the targeted customer by offering a "differentiated net price outcome" in exchange for a commitment to purchase "higher volumes", in order to "optimis[e] volumes" manufactured and sold by Infrabuild's production facilities. Infrabuild does not dispute Nervacero's understanding*

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41 Nervacero's Exporter Questionnaire Response, at B-1.1(a), Nervacero SEF submission, page 14.

that such scheme, regardless of its name and nature, is designed to and has the effect of locking-in and optimising supply of the goods under consideration to large scale "Tier One" customers who can buy directly from Infrabuild. The customer's desire to purchase from an alternative source is removed or blunted by the volume and pricing structure agreed with Infrabuild, and the "differentiated net price outcomes" that result therefrom

Clearly, this scheme has allowed Infrabuild to significantly improve its sales and revenue performances and has had a significant impact on the competition dynamics in the Australian market. Infrabuild dominates the steel long products market in Australia. Its market power is an unmissable feature of that dominance. The differentiated net price outcomes of its Advantage Program "lock in" that dominance. The success of its Advantage Program and its role in achieving that dominance is not discussed in SEF 601. We respectfully request the Commission to take the effect of the Advantage Program into account. In our view, the Advantage Program insulates Infrabuild against price competition from small higher cost/higher price exporters such as Nervacero. To maintain the overall rebated price level, a customer must maintain high levels of supply from Infrabuild. Nervacero cannot compete against the currently incumbent exporters from Turkiye and other Asian countries. If a local customer is going to risk upsetting Infrabuild, and thereafter being denied supply or losing rebates, it is certainly not going to do so by buying from Nervacero at higher prices than are available from the incumbent exporters.

The strength of Infrabuild's marketing and supply/price structures, in circumstances of capacity utilisation figures that are at the highest they have been for five years, is another changed condition that is being enjoyed by the Australian industry, and which makes it much less likely to be materially injured by future competition, if any, from Nervacero, as a result of the expiry of the measure.[42]

This significant development and change to both the operational conditions of the Australian industry and the dynamics of the Australian market since the imposition of the measure is completely disregarded or dismissed in Report 601. The response in Report 601 is incoherent, as it expressly maintains that the *changes to the Australian market* mean *nothing has changed*:

The commission considers that despite the changes in the pattern of trade resulting from the measures, the conditions of competition in the Australian market have not changed since the measures.[43]

…

The commission accepts that the composition of the Australian market has changed since the imposition of measures (as demonstrated in section 8.4.1). The commission considers that the change in composition is precisely because the conditions of competition have not changed…[44]

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42 Nervacero SEF comment, page 16.

43 Report 601, page 77

44 Ibid, page 87.

Report 601 then repeats its assertion that the Australian industry remains "vulnerable" – despite such vulnerability, if any, being solely caused by factors unrelated to exports from Nervacero or the existence of the measure:

> *…the commission considers that the Australian industry remains vulnerable to injury from lower priced imports. As detailed in section 6.4.3, the Australian industry has experienced a deterioration in market share during the inquiry period at a time when the Australian market was expanding. In its submission Nervacero implies that the Australian industry is operating at capacity and therefore would not be able to maintain market share in an expanding market….*
>
> *Further, as detailed in section 8.4.3, the commission considers that domestic demand for rebar is likely to moderate given that the fiscal stimulus applied during the COVID-19 pandemic dissipated and monetary policy settings have recently been tightened. The commission considers that in a contracting market price competition among suppliers will intensify as they seek to maintain volumes and market share.*[45]

Report 601 disregards the effect of Infrabuild's Advantage Program, and the lack of evidence indicating that expiry of the measure will *more likely than not* result in recurrence of dumping and injury associated with the goods subject to measure. This flaw cannot be cured by asserting that *"while no single factor is determinative, the commission considers that when assessed in aggregate"* the requisite satisfaction under Section 269ZHF(2) can be met.[46] The likelihood test and the level of satisfaction required by Section 269ZHF(2) cannot be properly or reasonably met where the assessment made is not more than a compilation of factors that the Commission claimed to have considered, without actually conducting any meaningful evaluation of those factors.

3 Incorrect and unreasonable finding of "probable" recurrence or continuation of dumped exports resulting from expiry of the measure with respect to Nervacero

Since imposition of the measure in 2018, Nervacero's exports have diminished. Since 2019, they have practically ceased. During the inquiry period, Nervacero exported only one container of rebar, under special circumstances. The shipment was not representative or indicative of a likelihood that dumping would recur or continue.[47] This single container export was a stand-alone and one-off stock and production management activity. It was not inconsistent with the overall pattern of Nervacero's approach to the Australian market, namely an *absence* of exports to Australia due to:

- the high price and strong demand in Nervacero's main EU markets;
- higher cost of production and freight as a Spanish exporter;
- higher import tariffs; and
- the competitive advantage of sources of exports not subject to measures.

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45 Report 601, page 87.

46 Ibid, page 89.

47 SEF 601, page 46.

Nervacero detailed the reasons behind its lack of exports in Inquiry 601 as follows:

> *Nervacero's exports to Australia diminished after 2018. This is due to a range of factors, including of course the imposition of the measure. However the key reasons for the decline in Nervacero's exports have been the following:*
>
> > *1 Cessation of Nervacero sales to the Australian industry itself– we recall that during the original investigation period Infrabuild's predecessor "OneSteel" was Nervacero's [CONFIDENTIAL TEXT DELETED – description of volume] Australian customer, accounting for about [CONFIDENTIAL TEXT DELETED – description of volume] of Nervacero's total exports to Australia. The Australian industry ceased to import from Nervacero after 2018, partly due to its own production upgrade, and partly due to the management and market strategies adopted by the new Australian industry entity, Infrabuild.*
> >
> > *2 Strong demand and profitable steel prices for rebar in both Spanish and European markets, and the overall lack of domestic capacity in Europe – these are further elaborated in this submission below, referring to information provided in the exporter questionnaire responses.*
> >
> > *3 Relatively higher costs of production and higher logistics cost for Nervacero as a producer from Spain, in comparison to other suppliers for the Australian market, with lower costs of production and freight – these too are further elaborated in this submission below.*
> >
> > *4 Higher costs of production, higher prices and continued high demand in the EU zone – market and industry disruptions are likely to continue, including for Nervacero, due to continued inflationary pressures and the energy crises associated with the EU's stance towards Russia's invasion of Ukraine, and the effect of the war in the region more broadly.*
>
> *These conditions will not change because of the expiry of the measure. Each of these factors countermands the proposition that expiry of the measure is likely to lead to a recurrence of material injury to the Australian industry caused by exports from Nervacero. A recurrence of exports from Nervacero above negligible volumes cannot be said to be a likely probability.*
>
> *In relation to Nervacero's own operational conditions, we would like to highlight that Nervacero's rebar production was operating at near full capacity during the inquiry period.*[48] *As such, Infrabuild's generic claim of "excess production capacity" cannot apply to Nervacero.*[49]
>
> *Nervacero's sales of rebar in the domestic Spanish market accounted for nearly half of its total sales. In comparison, during the original investigation period, the Spanish domestic market accounted for [CONFIDENTIAL TEXT DELETED – percentage] of Nervacero's total sales of the GUC. Sales to the combined Spanish and European markets accounted for the vast majority of*

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48 Nervacero Exporter Questionnaire Response, information under "G-10 Capacity Utilisation".

49 Refer to SEF 601, pages 64 and 65.

> *Nervacero's sales during the inquiry period – [CONFIDENTIAL TEXT DELETED – percentage] as compared to [CONFIDENTIAL TEXT DELETED – percentage] during the original investigation period.*
>
> *A number of long-term factors have driven up the price of rebar in the EU. These include the energy crisis, escalated by sanctions on Russian natural gas, and the wider impact of the Russia-Ukraine conflict across the EU region. Further, the EU is pioneering legally-binding responses to the threat of climate change, with a mature system of carbon credits and an upcoming "carbon border adjustment mechanism" ("CBAM") to address carbon leakage and to incentivise investment in carbon-neutral production methods in traditionally energy intensive sectors such as steel production. Nervacero and the Celsa Group have an industry leading climate change mitigation practice and have been taking actions to reduce carbon dioxide emissions.[50] All of these developments have been creative of inflationary pressure across all EU markets and have caused sharp cost increases for steel producers such as Nervacero.*

These reasons, too, were not properly considered and evaluated in Report 601's assessment of the likelihood that dumped exports would continue or recur. Report 601 asserts that recurrence or continuation of dumping of the goods subject to the measure is likely on the basis that:

> *The commission found that in the inquiry period specifically, exports continued for Spain (Nervacero) and Millcon from Thailand. The commission considers that these two exporters would likely continue exporting if the measures expire.[51]*

Such finding is contradicted by the facts that Nervacero's exports to Australia had practically ceased since 2019, and that the only container exported during the inquiry period was due to the special circumstances that were well explained and established in the inquiry. The finding is also contradicted by the multiple factors identified by Nervacero above, which indicate that, on balance, it is unlikely for exports from Nervacero to continue or recur in the near future.

Report 601 also asserts that "distribution links" suggest that exports from subject countries would be likely to continue or recur:

> *The commission considers that if the measures were to expire, importers (particularly steel traders) supplying the Australian market would likely quickly re-establish trade relationships with exporters from the subject countries at dumped prices. Therefore, should the measures expire, the commission considers that exports from the subject countries would likely continue or recur.[52]*

This too, is inconsistent with the evidence presented by Nervacero, which is that the customers Nervacero previously supplied in competition with the Australian industry, as well as the Australian industry itself, no longer source rebar from Nervacero nor from the Celsa Group. This has arisen due to the implementation of Infrabuild's customer loyalty scheme "Advantage Program".

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50 For more information, see https://www.celsagroup.com/wp-content/uploads/2022/05/thelargestcircular_eng.pdf and https://www.nervacero.com/Celsa.mvc/Innovacion

51 Report 601, page 63.

52 Ibid, page 64.

Report 601 further considers that domestic demand for rebar is likely to be moderate post COVID-19, yet the Australia *"will remain an attractive market for exporters, as has historically been the case"*. Such observations are speculative, and self-contradictory at best. There is no attempt to reconcile the predicted moderation in demand and the prediction that the market would *"remain attractive"* at the same time. Report 601 then goes on to *"expect"* that the high international freight cost – a prohibitive factor that is particularly significant for Nervacero as a Spanish exporter - *"would likely return to lower levels"*,[53] and therefore that exports from subject exporters would likely continue or recur.[54] This too, is without evidence and falls well short of the standard required for assessing likelihood.

Report 601 also asserts that *"excess production capacity of the subject exporters"* is a relevant factor for its assessment.[55] However, as pointed out in Nervacero's submission to the Commission:

> *In relation to Nervacero's own operational conditions, we would like to highlight that Nervacero's rebar production was operating at near full capacity during the inquiry period.[56] As such, Infrabuild's generic claim of "excess production capacity" cannot apply to Nervacero.[57]*
>
> …
>
> *Due to a combination of the high domestic/European market prices, high cost of production and of transport exacerbated by the far-reaching effect of ongoing energy crises and Russia's invasion of Ukraine,[58] and continuing high capacity utilisation directed to Spanish and European markets, Nervacero has been disincentivised to export rebar to Australia. The lack of exports during recent times is itself evidence of the effects of these conditions on Nervacero's sales behaviour. The "competitiveness gap" associated with the much higher price level in the Spanish and European market, Nervacero's higher costs of production and freight, and the lower customs duties enjoyed by the dominant sources of supply, especially from the Asian region, including Turkiye, will not be bridged by the expiry of the measures or by any predictable factor, whether in the short, medium or long term.*

To be clear, Nervacero rejects the assertion that a capacity utilisation rate at [CONFIDENTIAL TEXT DELETED]% can be characterised as having *"excess"* capacity that is indicative of likely dumping. By common industry standards, [CONFIDENTIAL TEXT DELETED]% is practically full capacity utilisation. In any case, there is no evidence that would suggest that, because Nervacero had [CONFIDENTIAL TEXT DELETED]% spare capacity, such capacity would likely be taken up by exporting to Australia, *whether or not at dumped prices*.

In any case, the factors listed by Report 601 merely suggest that expiry of the measure may or could increase the *possibility* for exports subject to the measure to recur, but does not establish that such

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53 Report 601, page 65.

54 Ibid.

55 Ibid, page 66 and 67.

56 Nervacero Exporter Questionnaire Response, information under "G-10 Capacity Utilisation".

57 SEF 601, pages 64 and 65.

58 Australian Competition and Consumer Commission, Global container trade disruptions leave Australian businesses vulnerable dated 4 November 2021.

recurrence is *more likely than not* – especially when considered against the factors preventing and disincentivising Nervacero from resuming such exports.

In response to Nervacero's submissions, Report 601 also makes more specific comments regarding the likelihood for dumping to recur with respect Nervacero. The key factors noted by Report 601 are the following:

- *"Nervacero is a member of Celsa Group";*

This does not make it more likely than not for Nervacero to export to Australia at dumped price resulting from expiry of the measure.

- *"The commission notes that the volume of exports from CELSA Poland reached its peak during the inquiry period. This indicates that even with a favourable European market (and the allegedly higher costs of transport from Europe as opposed to Turkey and Asia), Australian was an attractive market for the CELSA Group."*

This does not make it more likely than not for Nervacero to export to Australia at dumped prices resulting from expiry of the measure. Indeed, this says nothing at all about the goods from Spain – which is specifically about goods exported from Nervacero, being the subject of the inquiry. As stated in Nervacero's submission dated 16 January 2023:

> *Infrabuild repeats its assertion that Celsa Huta Ostrowiec's membership of the Celsa Group is a basis for the Commissioner to decide to secure the continuation of the current measure. We recall that the Commissioner is required, under Section 269ZHF of the Act, to consider whether the Minister should take steps to secure the continuation of the measure with respect to Nervacero, an exporter from Spain, Celsa Huta Ostrowiec is a Polish-domiciled exporter and manufacturer. The subject of this inquiry is not exports from Poland, or exports by Celsa Huta Ostrowiec, or exports by the entire Celsa Group. Infrabuild's assertion that the measure should be continued as against Nervacero because there have been exports from countries not subject to the measure is plainly wrong and without any legal basis.*[59]

If anything, the established exports from Poland would point against the proposition that it would be likely for the exports to be shifted back to Nervacero simply because of expiry of the measure. There is no evidence to suggest this would probably occur.

Report 601 also disregards the extensive number of factors presented by Nervacero that act as disincentives for Nervacero to export to Australia, and other indications that exports from Nervacero are unlikely, including:

- the competitive edge of Asian and Turkish exports;
- continued demand from key European market; and
- shortage of supply and high cost associated with Russia's invasion of Ukraine.

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59 Nervacero submission in response to Infrabuild's late submission, dated 16 January 2023, EPR 601-31, pages 1 and 2.

Report 601 disregards these factors on the basis that the growth forecast in Spain and Europe is merely *"not as strong as before"*.[60]

At best, the statistics and forecast cited by Report 601 suggest that economic conditions in Spain and in Europe more broadly will be disrupted, in the short term, by slower growth. They do not suggest that the high cost, high price and strong demand in Nervacero's markets outside Australia, and the profound impact of the Russian invasion and EU's response to that conflict, will disappear or be fundamentally reversed.

Even at the broader European market level - which is not directly indicative of the specific market conditions faced by Nervacero - rebar prices in Europe remain at one of the highest levels world-wide, and much higher than in Australia's nearby regions such as Japan and China.[61] Report 601 does not suggest that the decline in European prices indicates that if Nervacero is to export the product to Australia at the same price, it would have been competitive in comparison to other imports and injurious to the Australian industry. The only "likelihood" analysis offered by Report 601 is that:

> *The commission considers that the projected slowdown in the European market, and the already evident decline in rebar prices, is likely to be detrimental to Nervacero. Based on Nervacero's willingness to export to Australia at dumped prices in previous periods of economic slowdown in its domestic market, the commission considers it likely that in the absence of measures Nervacero would likely export goods to Australia at dumped prices.*[62]

This is nothing more than an assertion that because Nervacero exported the goods to Australia at dumped prices before, this is likely to happen again. The facts and reasons presented by Nervacero indicate Nervacero has no such "willingness" or intention to engage in selling the goods to Australia at dumped prices. This is not detracted by the special one-off exportation of a single container of old production during the inquiry period.

Paradoxically, Report 601 also relies on the high prices and high costs faced by Nervacero as a basis to suggest that it is dumping from Nervacero is likely:

> *Additionally, InfraBuild provided evidence available to it in the form of third party paid subscription data to support that the normal value for Spain has recently increased more than the export price. This was demonstrated by the commission's dumping assessment for the inquiry period. The Government of Spain's submission also referred to significant steel price inflation in Spain and Europe, which could have increased the normal value for Spain. The evidence provides a reasonable basis for the commission to conclude that, if exports continue for Spain, those goods are likely to continue to be dumped.*[63]

This conclusion is wrong and problematic. High prices and high costs are disincentives to export, and are evidence of the "unlikeliness" of Nervacero exporting the goods to Australia, due to lack of competitiveness. The Commission's conclusion is made on an assumption that exports from Spain will

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60 Report 601, page 81 to 86

61 Ibid, page 85

62 Ibid, page 86.

63 Ibid, page 71.

actually "continue" and that "if exports continue" then they are likely to be dumped. Infrabuild's so-called "evidence" confirms nothing more than Nervacero's advice that the domestic and key regional market prices in Spain and Europe have experienced strong growth and that the high price and high cost in the region is likely to continue. These factors have contributed and will likely continue to contribute to Nervacero's decision not to export to Australia, even if the measure expires. The higher cost, higher prices, higher import tariffs, and supply chain disruption from the Russian invasion, combined with the dominance of the Australian industry itself through its "Advantage Program", and the existing lower priced imports from the Asian region and Turkiye, all point *against* the likelihood of Nervacero re-entering the Australian market.

As another example of the lack of objectivity and improper assessment of "likelihood" in Report 601, we refer to this observation regarding the possible trend in Australian market:

> *the commission considers that domestic demand for rebar is likely to moderate given that the fiscal stimulus applied during the COVID-19 pandemic dissipated and monetary policy settings have recently been tightened.*

Rather than acknowledging that this would make the Australian market less "attractive" and would continue to make Nervacero's product uncompetitive and unattractive to customers in the Australian market, this "moderation" is used by Report 601 as a basis for asserting that the Australian industry is more likely to be injured by goods subject to the measure. Such a conclusion is incorrect and unreasonable. Everything points to a decreased likelihood of exports to Australia by Nervacero, as has been the case since 2018.

Nervacero submits that Report 601 fails to meet the legal standard required by Section 269ZHF(2) for the assessment of "likely effect". Report 601 attempts to answer the question by asserting that "*no single factor is determinative*",[64] and then drawing a conclusion of likelihood by claiming that the conclusion can be made when all factors are assessed in the aggregate. However there is no objective and balanced assessment of those factors, and no explanation of how such assessment was made, or on what basis the balance of probability is said to be "more likely than not".

C Correct or preferrable decision

10. Identify what, in the applicant's opinion, the correct or preferrable 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, that he has decided not to secure the continuation of the anti-dumping measures with respect to Nervacero. This is because, there is insufficient evidence to support a finding 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.

64 Report 601, page 89.

D Grounds in support of decision

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferrable 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 601, which were accepted by the Minister in his decision to secure continuation of the measure as against Nervacero.

E Material difference between decisions

12. 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 cause the expiry of the measures with respect to Nervacero after 7 March 2023. On that basis exports of rebar from Nervacero will not be subject to anti-dumping measures.

F Conclusion and request

The Minister's decision to which this application refers is a reviewable decision under s 269ZZA 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 Nervacero seeks to have reviewed.

Nervacero is an interested party in relation to the reviewable decision.

Nervacero's application is in the prescribed form and has otherwise been lodged in accordance with the Act.

We submit that the application is a sufficient statement setting out Nervacero's 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 this 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 Nervacero S.A.

Charles Zhan
Partner

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Associate