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Australian Capital Territory 2601

By email

Dear Mr Ellis

## **Compañía Española de Laminación S.L. Review 2020/130 - interested party submission**

As you know we represent Compañía Española de Laminación S.L. (“Celsa Barcelona”) in this Anti-Dumping Review Panel (“ADRP”) review of the outcome of Continuation Inquiry 546.

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We welcome the opportunity to provide these further submissions as an interested party in this review. In this submission, we provide further comments to illustrate that the Minister’s decision to continue the measure as against Celsa Barcelona cannot be considered the correct or preferable decision in the circumstances presented.

We believe we demonstrated, in our client’s review application to the ADRP (“the Application”), that the Minister’s decision, as made on the basis of Report 546, is not the correct or preferable decision. This is because the available evidence, examined in an objective and unbiased manner, did not support a finding that expiry of the measure would probably lead, or would probably be likely to lead, to a continuation or recurrence of dumping by Celsa Barcelona and of material injury to the Australian industry caused by that dumping.

We noted that the finding with respect to the probability of future exports by Celsa Barcelona contained in Report 546, whether “dumped” or not, was based on the following factors:

- a possible economic downturn in Spain/Europe, and its implications;

- the observation that Celsa Barcelona’s exports diminished in recent years, and that there were no exports in the inquiry period (“IP”), but that it exported a small quantity to Australia subsequent to the IP; and
- Celsa Barcelona’s affiliation with exporters not subject to the anti-dumping measures concerned.

Our client’s Application also highlighted clear contradictions and omissions in Report 546, including that in making the finding with respect to Celsa Barcelona:

- the Commission improperly dismissed the impact and continued and future significance of imports not subject to measures;
- the Commission’s contradictory reasoning and findings concerning the Australian industry’s “price sensitivity” claim and its relevance to any probable Celsa Barcelona’s exports.

We believe that the Application provided detailed explanations as to why Report 546, and the Minister’s decision based on the recommendations in Report 546, failed to meet the legislative requirements of Section 269ZHF(2) of the *Customs Act 1901* (“the Act”).

In this interested party submission, we wish to make further submissions with respect to the Commission’s reliance on predictions about economic conditions as a basis for the continuation, as well as the consideration of the impact and significance of imports not subject to measures, and the Australian industry’s alleged “price sensitivity”.

Before providing additional comments on these issues, we wish to recall the fundamental considerations and standards that the Minister is obliged to adopt in determining if an anti-dumping measure should be continued after its otherwise mandatory expiry date.

## **A Considerations and standards for continuation not fulfilled**

Firstly, the legislative text under Section 269ZHF(2) makes it abundantly clear, by its use of the word “unless” and of the phrase “would lead, or would be likely to lead”, that a causative nexus must be established between the expiry of the measure or measures concerned and the recurrence of dumping of the goods under consideration (“the GUC”) and material injury caused by such dumping, being injury that the measure was intended to prevent. This is consistent with the well-established jurisprudence of the WTO Dispute Settlement Body.

In *US – Corrosion-Resistant Steel Sunset Review*, the Appellate Body observed that:

*107. ...in a sunset review of an anti-dumping duty, investigating authorities must determine whether the expiry of the duty that was imposed at the conclusion of an original investigation would be likely to lead to continuation or recurrence of dumping.*

...

*111. This language in Article 11.3 makes clear that it envisages a process combining both investigatory and adjudicatory aspects. In other words, Article 11.3 assigns an active rather than a passive decision-making role to the authorities. The words “review” and “determine” in Article 11.3 suggest that authorities conducting a sunset review must act with an appropriate degree of diligence and arrive at a reasoned conclusion on the basis of information gathered as*

part of a process of reconsideration and examination. In view of the use of the word "likely" in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible.

...

113. Article 11.3 states that, notwithstanding the provisions of Articles 11.1 and 11.2, Members "shall" terminate an anti-dumping duty "unless" the authorities make an affirmative likelihood determination in a sunset review. This confirms that the mandatory rule in Article 11.3 applies in addition to, and irrespective of, the obligations set out in the first two paragraphs of Article 11. This also suggests to us that authorities must conduct a rigorous examination in a sunset review before the exception (namely, the continuation of the duty) can apply. In addition, our view of the exacting nature of the obligations imposed on authorities under Article 11.3 is supported by a consideration of the implications of initiating a sunset review. The last sentence of Article 11.3 allows the relevant duty to continue while the review is underway, and Article 11.4 contemplates that the review process may take up to one year. These provisions create an additional exception to the requirement that anti-dumping duties will be terminated after five years, permitting a Member to maintain the duty for the period during which the review is ongoing, regardless of the outcome of that review. This, too, suggests that the drafters of the Anti-Dumping Agreement saw the sunset review as a rigorous process that can take up to one year, involving a number of procedural steps, and requiring an appropriate degree of diligence on the part of the national authorities.

114. The Panel described Article 11.3 as imposing the following obligations on investigating authorities in a sunset review:

*The text of Article 11.3 contains an obligation "to determine" likelihood of continuation or recurrence of dumping and injury. The text of Article 11.3 does not, however, provide explicit guidance regarding the meaning of the term "determine". The ordinary meaning of the word "determine" is to "find out or establish precisely" or to "decide or settle". The requirement to make a "determination" concerning likelihood therefore precludes an investigating authority from simply assuming that likelihood exists. In order to continue the imposition of the measure after the expiry of the five-year application period, it is clear that the investigating authority has to determine, on the basis of positive evidence, that termination of the duty is likely to lead to continuation or recurrence of dumping and injury. An investigating authority must have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence.*

115. The Panel's description of the obligations of investigating authorities in conducting a sunset review closely resembles our own, and we agree with it.<sup>1</sup>

The Appellate Body's view has recently been echoed in the WTO Panel Report in *Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars*, where the Panel observed:

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<sup>1</sup> Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*

*The assessment under Article 11.3 is not about whether dumping is causing injury, but is instead about whether the expiry of anti-dumping duties would be likely to lead to the continuation or recurrence of injury.<sup>2</sup>*

Secondly, it is well-established that the word “likely” in Section 269ZHF(2) requires the Commission to determine the causative effect of the expiry of the measure concerned (ie the recurrence of dumping and of the injury that the measure was intended to prevent) based on positive evidence, and to a “more probable than not” standard, and not to be satisfied of such causation based on mere possibility, or speculation, or other lesser degree of certainty.<sup>3</sup>

It is Celsa Barcelona’s submission that Report 546, in its recommendation that the measure should be continued against possible future exports from Celsa Barcelona after the original expiry date of the measure, failed to meet these requirements and standards.

Report 546’s view that there would be future exports by Celsa Barcelona, and that those exports may be dumped, and that material injury may recur by reason of Celsa Barcelona’s assumedly dumped exports, and that these outcomes were probable, was predicated on the following factors:

- that Celsa Barcelona belongs to a large multinational corporate group, with rebar manufacturing facilities in countries not subject to the measure;<sup>4</sup>
- macro level economic *uncertainties* caused by *force majeure*, being the COVID-19 pandemic, and the *possibility* of economic downturn;<sup>5</sup>
- that Celsa Barcelona had maintained its qualification certificate to supply rebar under the Australian and New Zealand standards (“ACRS”),<sup>6</sup> and
- that Celsa Barcelona exported a small quantity of the GUC to Australia after years of absence from the market with the measure still in place.

These factors do not suggest any consideration, or any real consideration, of the question of whether there would be a causative nexus between the expiry of the measure and the recurrence of dumping and material injury. They are unconnected to the proposition that dumping of exports by Celsa Barcelona, and the injury that the measures were intended to prevent would recur as a result of the measure’s expiry. We ask the Review Panel to carefully read each of them, to assess for itself what it is about those things that point to the probability that the expiry of the measure would lead to the recurrence of injurious dumping by Celsa Barcelona.

## **B Reliance on predictions about economic conditions**

As identified in the Application, we submit that Report 546 incorrectly and improperly formed the view that dumping and injury caused by exports from Celsa Barcelona is likely to recur. This view was based, almost entirely, on speculation about the effects of COVID-19 on the European and Spanish

<sup>2</sup> Panel Report, *Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars*, para 7.54

<sup>3</sup> *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86 at [92]. This view is also confirmed by the ADRP in ADRP Report 2019/119, page 17.

<sup>4</sup> Application, at pages 9 to 12

<sup>5</sup> *Ibid*, at pages 12 -15

<sup>6</sup> *Ibid*, at page 10

economies.<sup>7</sup> The commentary on the *possible* economic effects of COVID-19 in Report 546 only highlights the great *uncertainty* that such a scenario presents for the operation of an economy, and the difficulty of divining what will *probably* happen in the case of any particular industry and a company in that industry.

Report 546 cites OECD reports on regional industry trends in 2019, which was before COVID-19. It notes that Celsa's performance contradicted that of steel producers in other European economies:

*Both S&P Global and the OECD have pointed out that many steel manufacturers in the region have reduced supply due to reduced demand:*

*Amongst the larger steel producers, the decrease was led by Poland (-10.8%), followed by Germany (-6.5%), France (-6.1%), Italy (-5.2%) and Spain (-5.2).*

*However, in the period 2017 to 2019, the Commission verified that while there has been no change to CELSA's capacity, CELSA has increased its production volumes.*

Likewise, Report 546 mentions the significant contraction in steel production and demand, as referred to in an S&P Global article, as being a factor relevant to the finding that Celsa Barcelona would also have excess capacity. However, despite this being cited as a key basis for the finding of likely future dumping by Celsa Barcelona in the Australian market, the "significant contraction" felt by others did not reflect the actual situation of Celsa Barcelona. Celsa Barcelona's rebar production volume in the first half of 2020 was in fact comparable to its production volume for the second half of 2019. Indeed, a more careful reading of the S&P Global article suggests that the reduced production related mainly to Europe's blast furnace steelmakers, rather than electric arc furnace producers like Celsa Barcelona.<sup>8</sup>

Further, Report 546 attempts to draw a "similar fact evidence" connection between what was the economic impact of the 2009 global financial crisis ("GFC") and what *could be* the impact of COVID-19. However that kind of comparison is wholly insufficient to support the Commission's view that "*exporting of dumped rebar is likely*" to arise from the pandemic, such as arose from the GFC. Indeed, the article cited by Report 546 refers to clear differences in market reactions to the COVID-19 conditions compared to the GFC, and concludes that any downturn is likely to be short-lived.<sup>9</sup>

*Despite all the doom and gloom, there are reasons to be optimistic about the second half of 2020. As of early May, we see encouraging signs that COVID-19 infection rates are mostly declining across Europe and that lockdown restrictions are being eased, notably in Germany, Italy and Spain. Signs of renewed activity in the manufacturing sector are also appearing, with Volkswagen, BMW, Volvo and Toyota restarting shuttered capacity — albeit targeting a cautious ramp-up. As lockdown restrictions lift across the region, economic activity should start to normalize over the summer.*

*It is also worth noting that, despite poor demand, regional steel prices have been supported by the swift cuts in supply. The S&P Global Platts TSI North European hot-rolled coil, EXW Ruhr, benchmark has fallen from an average of €478/t in February to €437.50/t as of May 1. During the 2008-09 downturn, regional hot-rolled coil prices plunged from a peak of €750/t in the*

<sup>7</sup> Ibid, at pages 11, 12, and 16

<sup>8</sup> Report 546 footnote 113, <https://www.spglobal.com/marketintelligence/en/news-insights/research/covid-19-impacts-demand-shock-for-european-steel-and-iron-ore>

<sup>9</sup> Ibid, footnote 113, <https://www.spglobal.com/marketintelligence/en/news-insights/research/covid-19-impacts-demand-shock-for-european-steel-and-iron-ore>

*September 2008 quarter to €360-€390/t in the June 2009 quarter. There are reasonable concerns, however, that rising steel imports could hit prospects for a recovery in the region, with the recent news that the EU Commission is considering imposing emergency restrictions on steel imports — likely by reducing import quotas if action is deemed necessary.*

*On balance, we expect the June quarter to mark the bottom of the European steel production cycle in 2020. Economic activity and steel supply are expected to build cautious momentum over the summer before rallying in the fourth quarter, fueled by the prospect of a better 2021 ahead. The main risks to this forecast are that the demand side of the European economy fails to rebound sufficiently, with excess stocks needing to be cleared, and, even more worryingly, a second spike in COVID-19 infections.* [underlining supplied]

In our view these commentaries highlight the fact that future economic conditions in Europe and Spain were uncertain. A host of unpredictable factors, including regulatory responses, rendered it difficult to forecast what might happen, and impossible to forecast what would probably happen. That said, some commentators were not predicting a sustained downturn, and Celsa Barcelona had not itself experienced a significant downturn. With respect, we submit that this body of fact and opinion could not warrant the inference that Report 546 attempts to draw, which is that a *probable* effect of the expiry of the measure on future exports by Celsa would be the dumping of exports by Celsa in Australia and resultant material injury to the Australian industry.

The truth is that the only certainty and probability that an objective and unbiased decision maker could draw from the information was that the impact of COVID-19 conditions on different companies, industries and markets was uncertain, but that where impacts were felt an economic recovery could be expected within a short compass of time. Such expectations have been confirmed by more recent analysis. In December 2020 the OECD predicted that after the decline in 2020 the overall Spanish economy would grow by 5% in 2021 and 4% in 2022, with continued disruption being most pronounced in the tourism sector.<sup>10</sup> The Q4 2020 edition of the same OECD *Steel Market Development* report cited by Report 546 notes that the overall steel sector in the EU could be expected to see fast recovery in 2021:<sup>11</sup>

*After an expected decline in 2020, EU steel demand is expected recover quickly in 2021. In its June 2020 Short Range Outlook, the World Steel Association forecasts a growth rate of 10.4% in 2021 after a 15.8% decline in 2020 (worldsteel, 2020[8]). Similarly, EUROFER expects market conditions to improve before the fourth quarter of 2020 or early 2021 (Eurofer, 2020[18])*

This optimism is shared by the Australian industry itself. It has been recently reported that:<sup>12</sup>

*Sanjeev Gupta's GFG Alliance is on the cusp of taking the once-beleaguered Whyalla steelworks from "red to black" financially - a task he says, if he's being honest, even he didn't think was possible.*

<sup>10</sup> <http://www.oecd.org/economy/spain-economic-snapshot/>

<sup>11</sup> OECD, *Steel Market Developments Q4 2020*, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SC\(2020\)1/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/SC(2020)1/FINAL&docLanguage=En)

<sup>12</sup> See, *The Australian*, "Whyalla's 'man of steel' Sanjeev Gupta has done what even he thought impossible", 4 December 2020 <https://www.theaustralian.com.au/business/leadership/whyallas-man-of-steel-sanjeev-gupta-has-done-what-even-he-thought-impossible/news-story/b4b5e5f7d43f8227088400666052f594>



...

*“Within the next few weeks you’ll have those [financials to be published]. They show a very positive picture, we’ve done very well. The only business, really, to be honest, which was dragging it down a bit was the Whyalla steelworks. Every other business is profitable and is making decent money.”*

Even if the picture was less clear at the time of Report 546, the correct and preferable view would have been that no one possibility was more probable than another, and that it was not possible to use the excuse of COVID-19 and an alleged steel industry downturn to arrive at a conclusive finding on the likely effect of the expiry of the measure. This is especially so where the downturn did not apply to our client and where industry commentators predicted that steel makers that had been badly affected would quickly recover.

Thus, we respectfully submit that the observations made in Report 546 about future European market conditions were either unreliable or speculative and could not be taken to support a recommendation that the Minister should secure the continuation of the measure as against Celsa Barcelona.

## **C Impact of imports not subject to measures and alleged “price sensitivity”**

We would also like to take this opportunity to draw the Review Panel’s attention to information concerning the probable effect of the expiry of the measure on future dumping and material injury which was well-known to the Commission even if not expressly revealed in Report 546.

The Commission published Statement of Essential Facts 560 (“SEF 560”) in its continuation inquiry concerning the same goods - reinforcing bar - with respect to exports from China on 23 December 2020. The inquiry period in SEF 560 is 1 July 2019 to 30 June 2020. This period overlaps with the last six months of the inquiry period in Continuation Inquiry 546. The information in that inquiry concerning the first half of 2020 was collected during the course of Continuation Inquiry 546 and prior to the finalization of Report 546. In particular, we note that the Commission received the Australian industry’s response to the Industry Questionnaire in Continuation Inquiry 560 on 24 August, just a few days after the publication of SEF 546.

Information pertaining to the Australian industry and the Australian market covering the first half of 2020 was therefore known to the Commission well prior to the presentation of Report 546 to the Minister on 9 October 2020. Moreover, Report 546 itself clearly indicates that the Commission did obtain information about the Australian industry and the Australian market for the first half of 2020 (eg. Figure 13 in Report 546), including the Australian industry’s pricing information for calendar year 2020 and specific sales data for the period from July to September 2020.<sup>13</sup>

Therefore, we expect that the FY2020 based market information demonstrated in SEF 560 merely reflects a different presentation of information that the Commission had regard to or should have had regard to for the purposes of Report 546. Relevantly, we refer to the presentation of that information in SEF 560 which provides more detail and clearer explanations about the Australian market and the relativities between imported goods and the Australian industry’s sales in the Australian market than does Report 546.

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<sup>13</sup> See Report 546, at page 65,66 and 89

Firstly, we refer to “Figure 7: Australian market share” as shown in Report 546, in comparison to the same chart in SEF 560. Figure 7 in Report 546 shows the following:

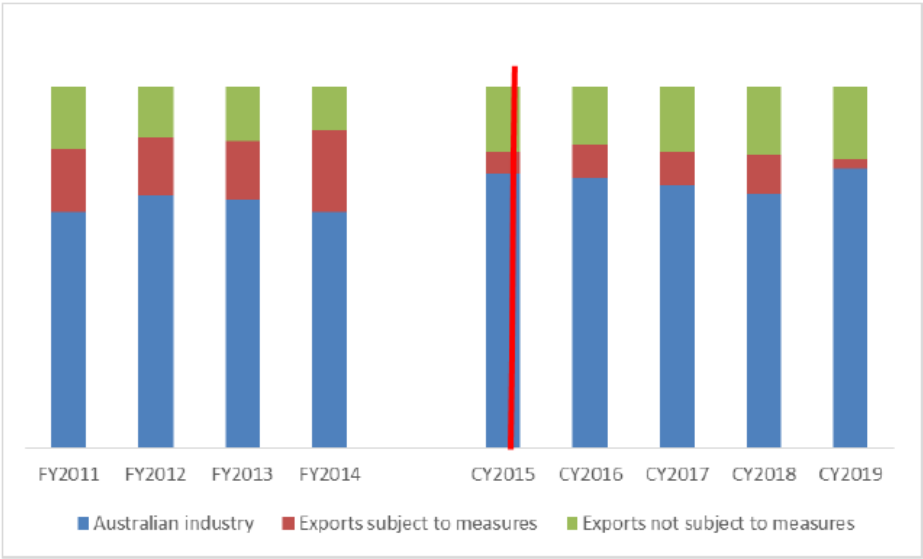


Figure 7: Australian market share

Figure 7 in SEF 560 shows the following:

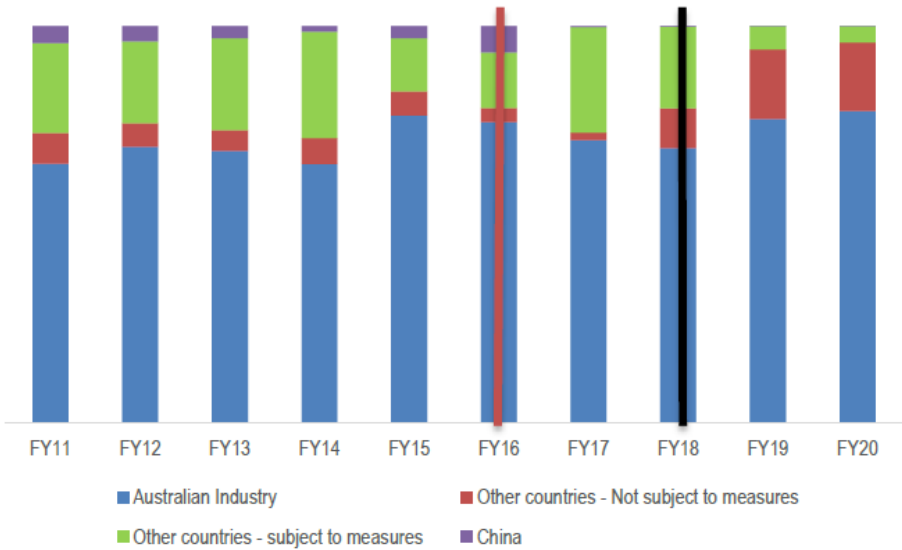


Figure 7<sup>48,49</sup>: Australian market share

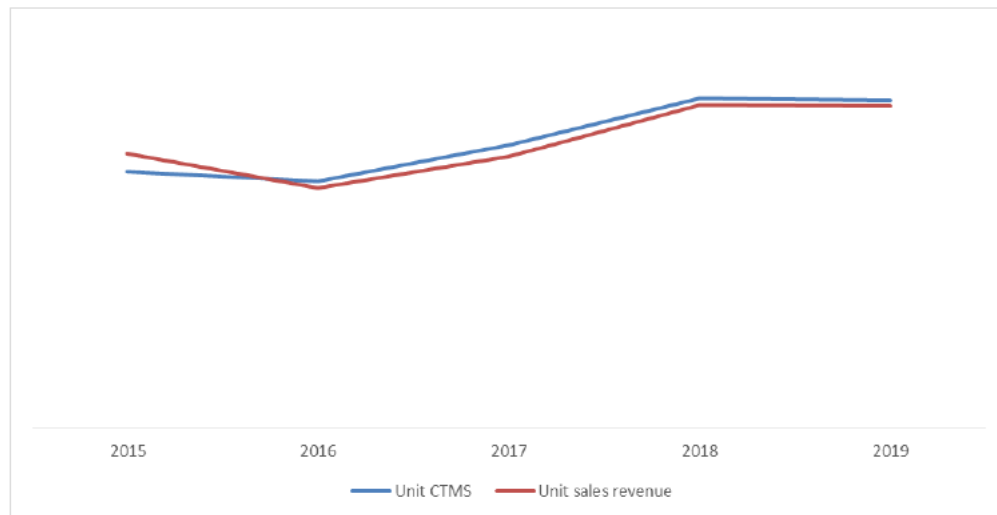
Celsa Barcelona’s Application notes the minimal proportion of imports accounted for by *imports subject to measures*, and the fact that most imports were accounted for by *imports not subject to measures*. SEF 560 Figure 7 further confirms this fact, and more clearly shows the expansion of the Australian industry’s market share in absolute terms. It also shows the expansion of the market share of *imports not subject to measures* in comparison to the market share of *imports subject to measures*.

Secondly, we refer to the comments in Celsa Barcelona’s Application about the Australian industry’s profitability as shown in Figure 8 in Report 546. The chart indicates that any volume or price related



material injury that the measures were intended to prevent was displaced by imports not subject to the measures, especially those from Turkey:<sup>14</sup>

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



**Figure 8: Australian industry unit selling price and CTMS**

*In our view, these factual analyses show that:*

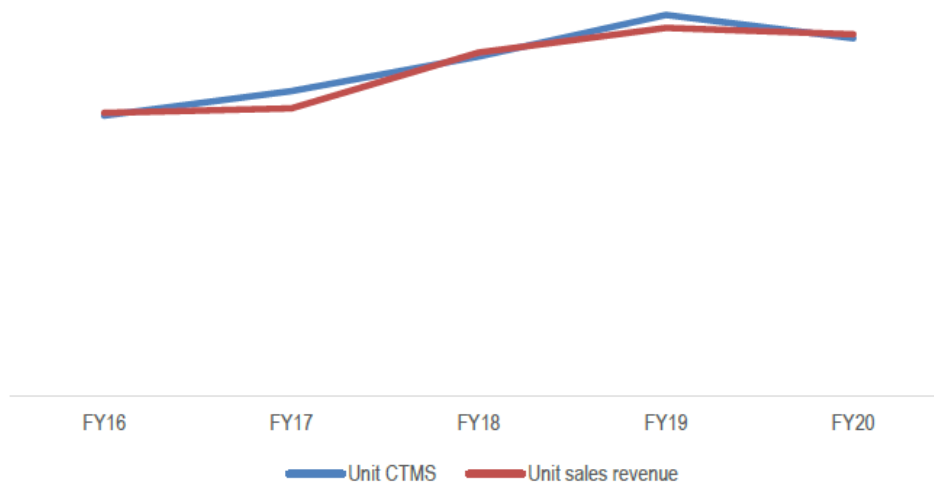
- *any volume-related material injury that the measure was intended to prevent is either non-existent or was no longer being caused by Celsa Barcelona’s exports as were subject to the measure during the inquiry period;*
- *any price-related material injury that the measure was intended to prevent was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

*Indeed, the Australian industry has repeatedly advised the Commission that the contemporary source of its material injury is imports from Turkey. This is evident from Infrabuild’s application for the imposition of dumping duty against Turkish imports, leading to the initiation of Investigation 495. Even during the continuation inquiry, Infrabuild continued to emphasize its view that Turkish exports are the dominant source of imports in the Australian market and that the dominance of those exports is likely to continue, displacing other sources of imports, unless*

<sup>14</sup> Application, at pages 5 and 6.

there were major shifts in the existing trade measures targeting Turkey in other jurisdictions, such as the US Section 232 measures. [footnote omitted]

SEF 560 depicts the Australian industry’s profitability differently if presented on a financial year basis:



**Figure 8: Australian industry unit selling price and CTMS**

Oddly, this did not appear to change the Commission’s view that Infrabuild “continued to experience price suppression and reduced profits and profitability”. The financial year based chart, which shows the Australian industry becoming more profitable, maintaining high prices, and increasing its market share, causes one to question the Commission’s view that the Australian industry is somehow more vulnerable than before, and that the continuation of the measure is justified because of such vulnerability. On any objective view, we submit that such vulnerability is not evident.<sup>15</sup>

SEF 560 also provides detailed volume and price comparisons between different sources of imports and the Australian industry. It is clear that the same analysis was conducted for the purposes of Report 546, but was presented differently. We refer to Figures 11 and 12 in SEF 560:

<sup>15</sup> Report 546, section 7.6, at page 81.

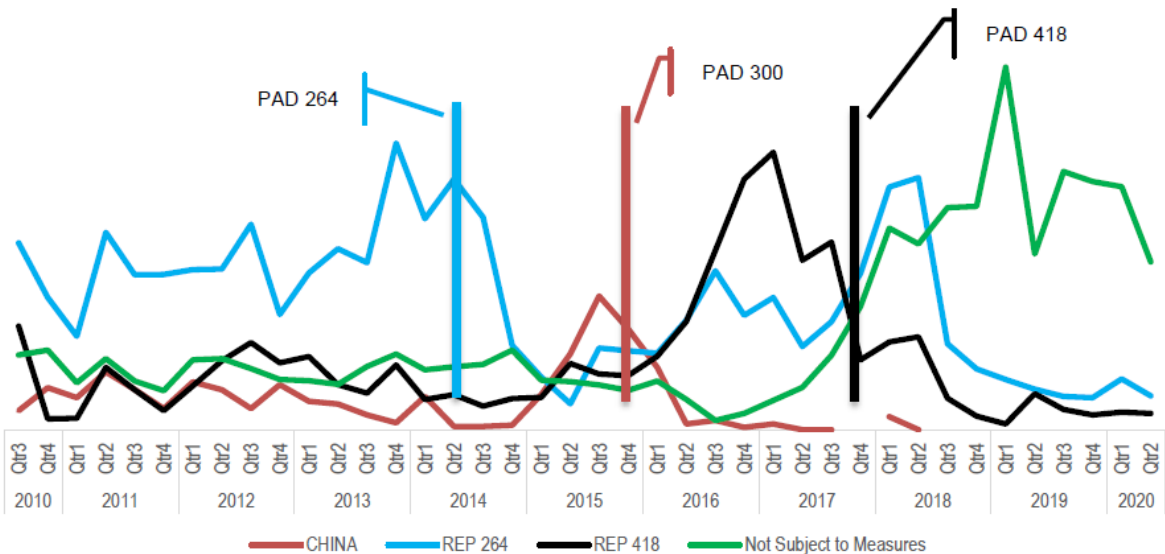


Figure 11: Quarterly export volumes of rebar (MT)

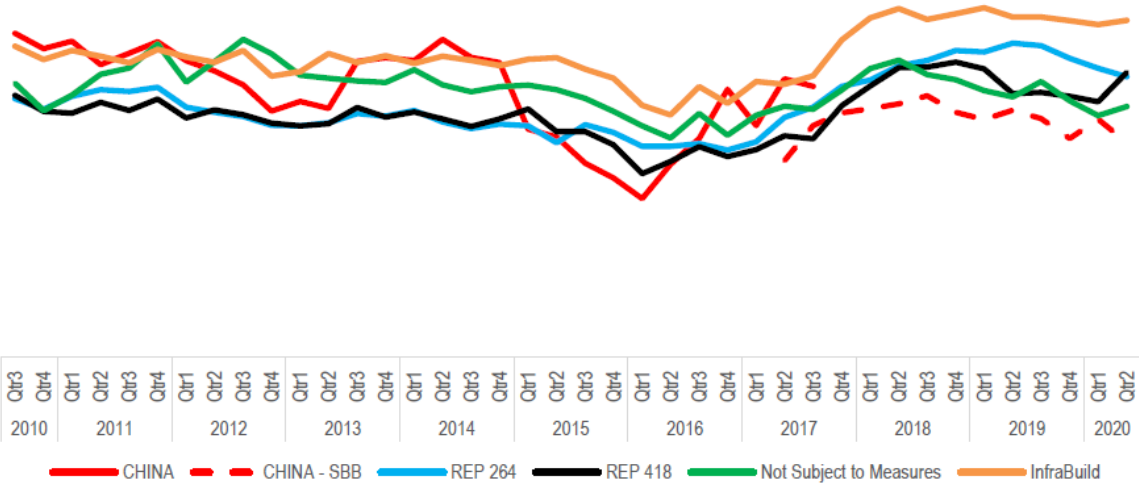


Figure 12: Quarterly export price, FOB A\$/MT<sup>61</sup>

Notably, the charts in SEF 560 provide an even clearer demonstration of the fact that *imports not subject to the measures* were the most competitively priced imports in recent years, and that they continued to lead in both price and volume terms in 2020. It is also notable that Infrabuild’s prices remained steady in 2018, 2019 and 2020. They were largely unresponsive to the fluctuation of import prices, whether the imports concerned were subject to measures or not. The price chart depicts Infrabuild as the dominant supplier on the market with relatively inelastic prices in comparison to import sources, whilst *imports not subject to measures* are at a clearly lower price point than the imports being reviewed in Report 546 (being the “blue line” imports corresponding to “REP 264”). And, we remind, that Celsa Barcelona had no imports in the inquiry period for Report 546, and only exported a negligible amount of the GUC in the first quarter of 2020, which were not the lowest priced.

SEF 560 makes almost the same observation regarding InfraBuild's pricing practices to that of Report 546:

*Until 31 December 2019, InfraBuild set its prices in respect of the goods by applying its IPP model, whereby it either referenced monthly import price offers presented by customers or in the case of sales to related parties, import price offers were the basis for determining monthly prices.*

*InfraBuild has provided the Commission with information related to its new pricing model which commenced on 1 January 2020. The new pricing structure is in place for some product specifications, while other product specifications continue to be based on IPP. Product specifications priced based on IPP account for a large proportion of InfraBuild's sales making InfraBuild highly susceptible to import prices for a significant proportion of its sales.*

*InfraBuild's submission of 12 August 2020 provided evidence that InfraBuild's customers continue to reference the price offers relating to imported rebar regardless of what price mechanism was in play.*

*In relation to the above the Commission has several examples of InfraBuild's customers quoting prices from import sources, which have influenced InfraBuild's prices during the inquiry period. This evidence can be found in Confidential Attachment 4. As InfraBuild reduces its prices in line with import offers, the comparison of InfraBuild's final prices and import prices will not show the full extent of price undercutting. As demonstrated in sections 5.5 and 5.6, InfraBuild has also continued to experience price suppression and reduced profits and profitability, which indicates that it has been unable to price rebar above its unit costs to achieve a net profit for its sales of rebar.*

*The Commission considers the above analysis and evidence supports the finding that when negotiating prices with its customers, InfraBuild continues to be influenced by, or directly follows, import pricing when setting its prices for rebar. In particular the lowest price offer in the market at the time.* [underlining supplied]

With the exception of the last paragraph, the above extract is essentially the same as section 7.4.8 in Report 546,<sup>16</sup> and refers to the same information that the Commission relied upon for that Report. The only substantive difference relates to the underlined paragraph, including the observation that the most notable impact on Infrabuild's pricing is "the lowest price offer in the market at the time". This observation is missing from Report 546, despite the apparent reliance, for the purposes of Report 546, on exactly the same factual materials as provided by Infrabuild to the Commission in both inquiries.

The underlined statement in SEF 560 confirms Infrabuild's persistent claim that the source of its material injury in recent years has been the imports from Turkey, which have been in the largest volume and have been the lowest priced. As we identified in the Application:<sup>17</sup>

*Despite the direct and positive evidence from the Australian industry itself, Report 546 decided to ignore and/or "not accept" this most critical factor, being a factor that affects both the*

<sup>16</sup> Report 546, at section 7.4.8

<sup>17</sup> Application, at pages 8 and 9

*Australian industry's material injury claim and any analysis of the likelihood of any recurrence or continuation of dumping-caused injury from Celsa Barcelona. Report 546 states:*

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

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

and:<sup>18</sup>

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

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

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

The point is this. In SEF 560, the Commission indicates that it will continue the measures against China because Infrabuild continues to be influenced by the lowest priced offer in the market, and Chinese exports are likely to be the lowest if the measure is allowed to expire. However, in Report 546, the Commission decided that it would continue the measures against Celsa Barcelona despite the fact that the lowest priced and largest volume of imports are those from Turkey and other countries not subject to measures, and that this market condition – lower priced, high volume Turkish and other imports not subject to measures - is likely to continue. How can an objective and unbiased investigating authority find the Australian industry to be price sensitive and most influenced by the lowest prices on the market

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<sup>18</sup> Application, at page 17

but then refuse to attribute material injury to the lowest priced and largest volumed source of imports at the same time?

We respectfully submit that the omission of the underlined paragraph from SEF 560 in Report 546 highlights the failure of the Commission to make an unbiased and objective recommendation with respect to the likely effect of the expiry of the measure against exports from Celsa Barcelona. Celsa Barcelona is a higher priced supplier whose exports have been largely absent from the Australian market in recent years, whose exports are unlikely to become bounding back into the market in large volumes any time soon, and whose prices have not in the past been competitive with the Turkish prices and cannot hope in the future to be competitive with the lowest priced exports in the market, which are themselves undumped.

Once again, we respectfully submit that the consideration in Report 546 ignores or plays down the significant changed facts with respect to the landscape of the Australian market, and that the decision emanating from that consideration is illogical and biased. The fact is that the expiry of the measure as against Celsa Barcelona, which has shifted supply focus away from Australia or non-EU markets in general, would most likely be non-consequential to the Australian industry. The Australian market is now conditioned by lower priced imports from multiple sources not subject to measures, especially those from Turkey. Further, the imports from Turkey have recently been proven not to have been dumped.

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We respectfully request the Review Panel to find that Report 546's finding with respect to Celsa Barcelona is based on contradictory reasoning, and has been made without sufficient evidence to support it.

We urge the Review Panel to recommend to the Minister that the correct and preferable decision is that the measure as against Celsa Barcelona should be allowed to expire.

Yours sincerely



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