PUBLIC FILE VERSION

OneSteel Manufacturing Pty Ltd
(Subject to Deed of Company Arrangement)
ABN 42 004 651 325

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10 January 2017

The Director
Operations 3
Australian Anti-Dumping Commission

BY EMAIL operations 3@adcommission.gov.au

Dear Director,

Review Inquiry No. 380 concerning Anti-dumping measures relating to Compañia Española de Laminación, S.L.

OneSteel Manufacturing Pty Ltd (**OneSteel**) refers to the submission of the exporter the subject of this review inquiry (**Celsa Barcelona**), and makes the following observations.

Celsa Barcelona asserts, in relevant part, that:

- the variable factors as they apply to the goods have not changed;
- as the period of the review is the same as the original period of investigation, the variable factors cannot have changed;
- the variable factors in the period of investigation have always been the variable factors in the period of investigation; and
- that the current review inquiry will cause "significant hardship to Celsa Barcelona", as follows:
  - subject the exporter to a set of non-contemporary variable factors; and
  - "ban" the exporter from obtaining its own review for a further 12-months.

OneSteel addresses each of these objections of the exporter in turn.

"The variable factors as they apply to the goods have not changed"

Advisors to Celsa Barcelona purport to paraphrase subsection 269ZA(3) of the *Customs Act 1901*[1] and then suggest at various intervals in its submission that there are only "*one set of variable factors as they apply to the goods*".[2] With respect, this suggestion by Celsa Barcelona is incorrect and misleading. For the avoidance of doubt, the provision under which the current review was

[1] References to statutory provisions are references to provisions of the *Customs Act 1901*, unless otherwise expressly stated.

[2] *EPR Folio No. 380/002 at p. 2.* See also the following statements in the submission: *"If the period of the review is the same as the original period of investigation, the variable factors cannot have changed. We suppose that the Commission intends to change the variable factors applicable to our client's exports, on the basis that the Commission thinks that its determination of them at the end of the original investigation was incorrect. That is not to say that the variable factors have changed. The variable factors in the period of investigation have always been the variable factors in the period of investigation. They cannot have changed."[at p. 2]*

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initiated is reproduced in so far as it is relevant to questions of whether the basis of the review is valid. As such, subsection 269ZA(3) provides [with emphasis added]:

> *(3) If:*
>
> *(a) anti-dumping measures have been taken in respect of goods; and*
>
> *(b) the Minister considers (either as a result of a recommendation from the Commissioner under subsection 269ZC(4) or on his or her own initiative) that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:*
>
> *(i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters may have changed; or*
> *(ii) the anti-dumping measures are no longer warranted;*
>
> *the Minister may, at any time, by notice in writing, request that the Commissioner initiate a review under this Division.*

The Assistant Minister in making public notice of his request that the Commissioner initiate a review of anti-dumping measures relating to Celsa Barcelona, could not have been clearer as to the reason why he considered that one or more of the variable factors relevant to the making of the measures in relation to (importantly) Celsa Barcelona may have changed, in relevant part:

> *"The former Parliamentary Secretary's decision to exclude exports for the goods from Spain by Nervacero S.A. from the dumping duty notice affects the variable factors ascertained for Celsa Barcelona. This is because Celsa Barcelona's dumping margin was determined with reference to (among other things) Nervacero S.A.'s export price and normal value. Given that exports of the goods by Nervacero S.A. are now excluded from the dumping duty notice, its normal value and export price should also be excluded from the calculation of Celsa Barcelona's dumping margin."*[3]

In other words, the variable factors as ascertained for Celsa Barcelona changed following the decision of the former Parliamentary Secretary to accept the recommendations of the Anti-Dumping Review Panel (**ADRP**), notice of which was published on 14 July 2016.[4] Until public notice was made of this decision, the variable factor relevant here (specifically, the export price) ascertained for Celsa Barcelona, was ascertained for a "collapsed" entity including Nervacero S.A. and as such included export price values that were attributable to Nervacero S.A. Following, publication of the former Parliamentary Secretary's notice (on 14 July 2016) accepting the recommendations of the ADRP, and decision to amend the dumping duty notice "so as to exclude

[3] *EPR Folio No. 380/001* (*Subsection 269ZA(3) Notice* dated 11 October 2016 at p. 1)
[4] *ADRP Report No. 34* (4 March 2016)

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from the notice exports of rebar from Spain by Nervacero", [5] the former Parliamentary Secretary in fact enabled the circumstance that resulted in the change to "one or more of the variable factors relevant to the taking of the measures in relation to that exporter",[6] specifically the export price values of Nervacero S.A., to the determination of the dumping duty rates.

Therefore, it is completely within the power of the Assistant Minister to request the current review inquiry in these circumstances. The conclusion that the ascertained export price for Celsa Barcelona has changed, albeit without the direct intervention of this exporter, is beyond question. In fact, there is no requirement under the provisions of Division 5 of Part XVB that the exporter contributed to, or caused, the change in its variable factors. Therefore, the absence of Celsa Barcelona as a party to the ADRP review, is irrelevant. The fact remains that by excluding the exports of Nervacero S.A. from the dumping duty notice, the ascertained export price for Celsa Barcelona changed on 14 July 2014 with retrospective effect to 11 November 2015.

"As the period of the review is the same as the original period of investigation, the variable factors cannot have changed" and "the variable factors in the period of investigation have always been the variable factors in the period of investigation"

Celsa Barcelona's contention that the fact that the review period is the same as the original period of investigation does not advance its argument that *ipso facto* the variable factors have not changed. The exclusion of exports by Nervacero S.A. from the calculation of the ascertained export price, because of the recommendation of ADRP Member Fitzhenry that the two entities should not be collapsed as a single entity for the purpose of ascertaining the variable factors, necessarily means that the variable factor (specifically the export price for Celsa Barcelona) has changed irrespective of whether or not the period of time remains unchanged. The following calculation of weighted averages should demonstrate this point:

> For example, assume 100 export sales to Australia, of which Nervacero S.A. accounted for 30 sales, and Celsa Barcelona account for 70 sales. Assume further, that the average export price Nervacero S.A.'s 30 sales was $100 each, whereas the average export price Celsa Barcelona's 70 sales was $70 each. The ascertained export price for a collapsed entity would therefore be $79 per sale (($100*0.30)+($70*0.70)). In other words, the ascertained export price for Nervacero S.A. and Celsa Barcelona would be $79 per sale. On the other hand, if you disallow the collapsing of the entities into one for the purpose of ascertaining variable factors, then quite clearly, the ascertained export price for Celsa Barcelona would be $70 per sale.

"That the current review inquiry will cause 'significant hardship to Celsa Barcelona'"

OneSteel rejects the suggestion that the current review inquiry will cause significant hardship to Celsa Barcelona. The suggestion that non-contemporary variable factors would be ascribed to it, completely ignores the role of the final duty assessment process within Australia's anti-dumping system, which will routinely ascertain contemporary variable factors relevant to the exporter for

[5] ADRP Report No. 34 at p. 27
[6] Sub-paragraph 269ZA(3)(b)(i)

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the purpose of determining final duty liability. Secondly, the current review inquiry process does not preclude the Minister from again recommending to the Commissioner that an earlier (less than 12 month) review inquiry be conducted for the aggrieved exporter.

Conclusions

Accordingly, OneSteel supports the Assistant Minister's decision under subsection 269ZA(3) to request the Commissioner initiate the current review. We consider the review a proper exercise of the jurisdiction, and necessary to update the ascertained normal values for Celsa Barcelona in light of the unexpected departure by the ADRP from the Commission's long-standing practice and policy in the treatment of related party exporters.

If you have any questions concerning this submission, please do not hesitate to contact OneSteel's representative [redacted] on [redacted] or [redacted] on [redacted].

Yours sincerely,

[redacted]

[redacted]