

Mr Adam Yacono
Director, Operations 3
Anti-Dumping Commission
1010 La Trobe St
Melbourne VIC 3008

2 December 2013

Our ref 11276/15955/80133959

Dear Mr Yacono

Hot rolled structural steel sections exported from Japan, the Republic of Korea, Taiwan and Thailand

We act for Nippon Steel & Sumitomo Metal Corporation (**Nippon**). We refer to the Australian Anti-Dumping Commission (**Commission**) investigation into hot rolled structural steel (**HRS**) products exported from the above captioned countries following an application lodged by OneSteel Manufacturing Pty Ltd (**Applicant**).

The purpose of this submission is to demonstrate that:

- (a) the investigation ought to be terminated - the Applicant's application lacks necessary detail and avoids analysis of crucial issues. As a result, Consideration Report No. 223 is inchoate and the conclusions drawn are speculative. We contend that the Commission ought to approach the Applicant's arguments and assertions with great caution; and
- (b) there is no cogent evidence that would satisfy or enable the Commission to make a preliminary affirmative determination (**PAD**).

1. Contentions

1.1 Nippon contends that the Application and its consideration by the Commission is deficient in the following respects:

- (a) With respect to price undercutting:
 - (i) the Applicant has failed to provide the information necessary to establish price undercutting;
 - (ii) the evidence the Applicant has provided undermines its own claims;
 - (iii) the conclusions reached by the Commission in the Consideration Report were not open on the material before it;
- (b) With respect to causation:

- (i) the Commission has failed to properly consider and weigh the "other factors" that caused the Applicant's injuries;
- (ii) the Applicant's injuries are best understood as being the result of the other factors, and part of the ebb and flow of the business cycle; and
- (c) The Applicant did not properly evidence its injury claims.

2. Background

2.1 On 26 August 2013, the Applicant lodged an application requesting that the then relevant Minister, the Minister for Home Affairs, publish a dumping duty notice in respect of HRS exported from Japan, Korea, Taiwan and Thailand.

2.2 The Applicant alleges Australian industry suffered material injury as a result of HRS exported from the nominated countries at dumped prices. The Applicant claims that it has experienced injury for a number of years, and experienced increased material injury during the 2013 financial year in the form of:

- (a) price depression;
- (b) price suppression;
- (c) reduced profits and profitability;
- (d) reduced domestic revenues;
- (e) reduced production capacity utilisation;
- (f) reduced employment; and
- (g) reduced attractiveness for investment.

2.3 The Commission published Consideration Report No. 223 on 24 October 2013 (**Consideration Report**). Nippon, as an interested party, makes these submissions.

3. Price undercutting

3.1 In the Consideration Report the Commission stated:¹

"Price undercutting occurs when imported product is sold at a price below that of the Australian manufactured product."

3.2 The Applicant's case on material injury and causality depends exclusively on its allegations of price undercutting. The Consideration Report summarises the Applicant's claims as follows:

¹ Consideration Report, 7.1.1

*" [The Applicant] is a volume sensitive supplier, which seeks to maintain market share and sales volume, in an environment in which it is competing with dumped imports, undercutting domestic selling prices."*²

*"...it is a price taker on the Australian market and that prices in Australia are driven by import parity pricing"*³,

and that,

*"the decline in average selling prices can be attributed to OneSteel responding to selling price offers for dumped HRS from Japan, Korea, Taiwan and Thailand."*⁴

3.3 Nippon submits that:

- (a) the Applicant has failed to provide the information necessary to establish price undercutting;
- (b) the evidence the Applicant has provided undermines its own claims; and
- (c) the conclusions reached in the Consideration Report were not open to the Commission on the material before it.

3.4 Each of the above submissions are detailed more fully below.

The Applicant has failed to provide necessary information

3.5 The lynch pin in the Applicant's undercutting claim is its policy of *"pricing on agreed premiums above a monthly import parity price"*⁵ (**Import Parity Policy**).

3.6 The Commission advises that an applicant needs to provide:⁶

"...sufficient information that is reasonably available and necessary to substantiate its claims of dumping/subsidisation, injury and causality."

3.7 The Import Parity Policy is the key element in the Applicant's case on material injury and causality. Despite this, the Applicant has not provided details of when the policy was introduced, the times and circumstances when the policy is not applied, how the policy works, and what methodology is used to determine the prices. There is no reason to suspect that the Applicant is not well placed to provide an explanation of how it determines an import parity price for like goods.

² Ibid

³ Consideration Report, 7.3

⁴ Application, p. 24

⁵ Application, p. 25

⁶ Custom's Instructions and Guidelines for Applicants, Part 4.2

- 3.8 The Commission ought not abrogate its responsibility, and should insist on this information being provided as part of the non-confidential version of the application. The Applicant's failure to provide full and proper details of its Import Parity Policy places Nippon in the position of being unable to defend its own interests. Nippon considers that the Application should not be accepted in the absence of this information.
- 3.9 Given the critical nature of the Applicant's Import Parity Policy, Nippon contends that if the investigation is to proceed in a fair and transparent way, a non-confidential version of the policy ought be placed on the public record. In any case, Nippon considers that the Commission is obliged to verify the Applicant's Import Parity Policy, including by investigating:
- (a) whether the policy is embodied in a written document;
 - (b) whether there are management reports that confirm the existence of the policy; and
 - (c) whether the policy has been approved at managerial or board level;
- and then setting out its full consideration of the issue by:
- (a) corroborating that the price markers for the goods under consideration were actually set with reference to the documents relied on to support the Import Price Policy;
 - (b) specifying and listing the documents relied on;
 - (c) expressing the weight given to such documents; and
 - (d) outlining the steps the Commission took and the questions it asked as part of the verification process.
- 3.10 In short it is incumbent on the Applicant to demonstrate the existence of an Import Price Policy and the Commission must not accept an assertion of this policy in the absence of actual and tangible documentary evidence.
- 3.11 Natural justice requires that Nippon be given an opportunity to respond and defend its interest to this issue. The Applicant has not stated whether it adjusts prices proactively, on the basis of what it understands the market price to be, or reactively, in response to specific offers that its distributors rely on to negotiate the price down. As such, there is a valid concern that the Import Parity Policy may result in the Applicant effectively creating its own injury. To the extent the Applicant is proactively setting prices, there may well be no basis in fact for it to have lowered its prices at all.

The Applicant's evidence contradicts its own claims

- 3.12 The Commission has correctly noted that the Applicant's claims of price undercutting are predicated upon it being a price taker in a price sensitive market.⁷ The Applicant's claims, however, are not supported by evidence included in the Application.

⁷ Consideration Report, Part 7.3

- 3.13 First, the claim of a price sensitive market is inconsistent with the Applicant's policy of charging a premium, which the Applicant admits to charging.⁸ The charging of a premium suggests that price is not the only consideration for domestic consumers of HRS. Moreover, it serves to decouple the Applicant's price from the import price.
- 3.14 Second, the Applicant's claim to be a price taker is not credible. The Applicant has stated that it is the only Australian producer of HRS.⁹ The Consideration Report accepted that not only does the Applicant have a nearly 70% market share, but that its market share percentage has been increasing over the four year period to be investigated.¹⁰ In such circumstances, the more credible claim is that it is the price setter, not the price taker. Even if it is not a price setter, it must be the dominant price influencer - there could be no other rational explanation for its market power and dominant market position of 70% of total sales for the goods under consideration.

The Commission has reached conclusions that are not open on the evidence before it

- 3.15 In an attempt to support its assertions of undercutting,¹¹ the Applicant provided four examples of price undercutting, one from each of the nominated countries. In relation to Japan, it provides the following example:¹²

"CMC offer of 24 January 2013 for the supply of angles in the 120-150 mm range for arrival in April/May 2013 was offered at \$xxx/tonne FIS (product ex JFE of Japan). Price offers are below OneSteel prices for the April to June 2013 quarter of approximately \$xxx per tonne by about X per cent."

- 3.16 After reviewing this, the Commission in its Consideration Report reached the conclusion that *'the application contains probative evidence that the prices for imported goods from Japan... have undercut OneSteel's prices of locally produced goods.'* This conclusion is, with respect, irrational and not open on the evidence before the Commission. This is so for various reasons which we explicate below.
- 3.17 First, the evidence provided in the Application cannot support an allegation of price undercutting. The Applicant has referred to offers in the marketplace, not actual contract prices. As the Commission itself explained in the Consideration Report, *"undercutting occurs when imported product is sold at a price below that of the Australian manufactured product."* The

⁸ Application, p. 16

⁹ Application, p.13

¹⁰ Consideration Report, Part 6.7.2 (Figure 6)

¹¹ The applicant only provides what it calls "market offers", not actual contract prices and the examples given appear to be "market offers" as well. Price undercutting requires evidence of examples of actual contract prices.

¹² Application, p.25

Commission has made clear that only actual sale prices, arising out of transactions, can be used to evidence allegations of price undercutting.¹³

"Customs and Border Protection will undertake a price undertaking analysis that focuses on data that covers transactions made during the investigation period.

This analysis compares the price of the imported goods with the sales price of the locally produced goods, ensuring that the transactions are made under the same conditions (e.g. timing, volume, discounts, delivery, credit, same customer etc.)."
(Emphasis added)

- 3.18 As can be seen from the above, the analysis to be undertaken is technical and detailed. The Applicant has to provide evidence of transactions that are made under the same conditions. The non-confidential details provided by the Applicant do not touch:
- (a) discounts;
 - (b) credit; and
 - (c) do not state whether the offer was made to one of their customers.
- 3.19 The Applicant has not provided this detail, or indeed any evidence of an actual sale. Instead, the Applicant has only provided evidence of offers (and a single offer at that).
- 3.20 Second, the Applicant has agreed that the market is segmented into distinct categories of product, and that the like goods themselves are divided up into different categories with different uses.¹⁴ As noted above, the premium charged by the Applicant suggests that the consumer base looks for more than just price in the product. This is apparent from the Applicant's corporate material. The Applicant has traditionally claimed that:¹⁵

"OneSteel has been able to sell its products at a premium to imports due to superior customer service, distribution capabilities, and the ability to provide value adding products and services."

From its presentation dated 20 September 2013, it is apparent that the Applicant is continuing to charge this premium for the same reasons:

"Wholesale and retail premiums [are] driven by level of service required and unique market offers."

¹³ Dumping Manual, p.122

¹⁴ Consideration Report, Part 4.3.2

¹⁵ "Steel Presentation" by Steve Harmer, Chief Executive Steel, at p. 18 available at:
<http://www.arrium.com/~media/Files/ASX%20Announcements/FY2014/Steel%20%20Recycling%20Presentations%202%20Sep%202013.pdf>

- 3.21 It seems likely that the utility of 'value adding products and services' and the 'level of service required' varies across the product range. As a result, some products may be more price sensitive than others. Despite this, the Applicant has provided only one example of one product, namely angles. There is no evidence of undercutting of I, U & H beams.
- 3.22 Third, there was no basis upon which the Commission could have considered that this evidence was 'probative'. The Dumping Manual states that "*sales information*" and "*verified information from importers*" may permit a better assessment of factors relevant to price undercutting allegations.¹⁶ The sole piece of evidence provided by the Applicant is neither verified nor a contract.
- 3.23 The Commission's 'Guide for Applicants' sets out where categories of evidence sit on a '*continuum of reliability*'.¹⁷ The Consideration Report did not merely make a finding about reliability, but it took the further step of finding that the evidence was probative. The Application provided only one piece of evidence alleging price undercutting by a single Japanese steel mill. It is difficult to see how the Commission could find that a single datum point constituted probative evidence of cost undercutting in the absence of:
- (a) any corroborative evidence;
 - (b) any investigation of the circumstances in which the offer was made; or
 - (c) any consideration of whether there could be contradictory evidence.
- 3.24 The Commission's conclusion that one piece of evidence was, on its own, entirely probative gives rise to an apprehension about the validity of the Commission's consideration of the application, and a concern that the Commission has misunderstood its task.

4. Causation

- 4.1 The Applicant states its argument on the causal link between dumping and injury as follows:¹⁸

"The dumping has been the influencing factor for the decline in prices in 2013 as the Australian industry seeks to maintain sales volumes and market share (and production throughout). Had OneSteel not reduced its prices in response to those for the dumped imports, OneSteel would have incurred higher losses brought about by further reduced capacity utilisation.

...

This application demonstrates that the HRS exports from Japan, Korea, Taiwan and Thailand have been at dumped prices. It is further demonstrated that the injury experienced by the Australian industry in 2013 is material. The undercutting by the

¹⁶ Dumping Manual, p. 137

¹⁷ Guidelines on the examination of a formally lodged application, Attachment 1- Evidentiary Standards

¹⁸ Application, pp. 25 and 27

dumped exports of the Australian industry's selling prices supports OneSteel's position that there exists a causal link between the dumping and the material injury from HRS exports from Japan, Korea, Taiwan and Thailand." (emphasis added)

4.2 The Applicant emphasises dumping and price undercutting as the relevant cause, no doubt for its own commercial reasons. However, the material provided by the Applicant in support of its allegations of material injury discloses the operation of other factors that could have caused this injury. As Rares J in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No. 2)* found, price undercutting cannot be considered in isolation from a proper consideration of other factors which may have caused injury, as required by s279TAE of the *Customs Act 1901 (Cth) (Act)*.¹⁹ Nippon submits that:

- (a) the Commission has failed to properly consider and weigh the "other factors" that caused the Applicant's injuries;
- (b) the Applicant's injuries are best understood as being the result of the other factors, and part of the ebb and flow of the business cycle.

The Commission failed to consider whether other factors may be the cause of the injuries

4.3 In order to determinate that the alleged dumped imports caused material injury, the Commission is required to have regard to any other factors that may have caused injury to a domestic industry so that their effects may be excluded from consideration.

4.4 Section 269TAE(2A) of the Act establishes these other factors as mandatory considerations. The Commission must take them into account not only when making its final decision, but also when deciding whether there are reasonable grounds for publication of a dumping notice under s269TC(1)(c)(i).²⁰ Section 269TAE(2A) was designed to reflect Article 3.5 of the Anti-Dumping Agreement. As stated by the WTO Appellate Body in *United States - Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan AB-2001-2*:

"223. ...[To] ensure that the injurious effects of the other known factors are not 'attributed' to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the authorities have no rational basis to conclude that the dumped imports

¹⁹ [2009] FCA 838 at [66]

²⁰ see eg. *Re Midland Metals Overseas Limited v the Comptroller-General of Customs; Richard John Hunt; Metal Manufactures Limited; Pacific Dunlop Limited and Pirelli Cables Australia Limited* [1991] FCA 278 at [42] per Hill J.

are indeed causing the injury which, under the Anti-Dumping Agreement, justified the imposition of anti-dumping duties..." (emphasis added)

- 4.5 Although the Consideration Report references 'Other Factors' at Part 7.2, Nippon submits that the Commission has not actually taken these other factors into consideration. Its treatment of the issue in the Consideration Report is in two parts, neither of which, it is submitted, amount to the consideration mandatorily required by statute. In the absence of a consideration of those other factors the Commission could not be reasonably satisfied that material injury existed.
- 4.6 First, the Consideration Report lists the other factors referenced by the Applicant in its Application, namely the contraction in the Australian market primarily as a result of a reduction in the government's investment in school buildings. The Consideration Report stated "[t]he Commission considers that there may be a range of supply and demand factors, other than dumping which may have caused injury." This statement is agnostic as to both the existence of other factors and their relationship with injury. It does not demonstrate that the Commission undertook the consideration required by s269TAE(2A) of the Act.
- 4.7 Second, the Consideration Report addressed other factors not referenced by the Applicant in its Application. Here, the Consideration Report nominated exchange rates as something that 'may be' a relevant consideration, and stated that it would 'be examined as part of the investigation'. This statement amounts to a confession that exchange rates had not been considered, but would be in due course.
- 4.8 The Commission cannot reach a state of satisfaction that there are reasonable grounds for publication of a dumping duty notice if it has failed to properly consider other factors that may have caused the injury. The Commission recognised that there may be other factors at play, but did not resolve (in a preliminary manner or otherwise) whether they caused the injuries complained of. As noted above, the WTO Appellate Body found in *United States - Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan AB-2001-2* that in the absence of this consideration there is 'no rational basis' to reach the conclusion that there were reasonable grounds for publication of a notice.

The Applicant's injuries are best understood as part of the ebb and flow of business

- 4.9 It is submitted that proper consideration of the other factors at play would have revealed that they are stronger candidates than dumping as the cause of the injuries alleged by the Applicant.
- 4.10 The Application briefly makes reference to some of these other factors, stating:²¹

"During 2010 and 2011 the Australian market partially recovered from the sharp decline brought on by the global economic downturn...

This was followed in 2012 by a contraction in the market as the stimulus programs reduced and the supply chain inventory rebuild had finished.

²¹ Application, Part A-9

Confidential Appendix A2 reflects the relative stability in the Australian market in 2010 and 2011, followed by a contraction in 2012 and again in 2013, with the decline in 2013 greater than in 2012."

- 4.11 The Application's consideration of these other factors is inadequate and incomplete, however. The Applicant provided its 2012 annual report as a non-confidential appendix to its Application (**2012 Annual Report**). The 2012 Annual Report made repeated mention of the high Australian dollar as a key negative factor in the Applicant's performance.²² The Applicant's 2013 Annual Report was published shortly after it made its Application to the Commission.²³ Notably, it does not make a single reference to dumping or overseas competition as being the cause of the Applicant's malaise, and instead blames "*the high Australian dollar and generally weak construction and manufacturing markets*."²⁴ Despite this, the Applicant has not mentioned currency anywhere in its Application as being a potential causal factor for its asserted woes. This oversight continues to its treatment of the other factors it did mention. What the Applicant has described is in effect the ebb and flow of the business cycle, as evidenced by the reference in its 2013 Annual Report to the "*generally weak construction and manufacturing markets*". However, there has been no genuine consideration by its Application of the role of this cycle in creating the injuries complained of.
- 4.12 It is submitted that the effect of the business cycle on both the Applicant and market as a whole is evident from the data provided by the Applicant. In light of this, the ebb and flow of the business cycle is a better explanation for the Applicant's injuries than any alleged dumping. For instance, the Applicant provided the following table regarding sale quantities:

Index of Sales Quantities²⁵

Period	(a) Your Sales	(b) Other Aust ⁿ Sales	(c) Total Aust ⁿ Sales (a+b)	(d) Dumped Imports	(e) Other Imports	(f) Total Imports (d+e)	(g) Total Market (c+f)
2010	100	n/a	100	100	100	100	100
2011	99.0	n/a	99.0	96.7	107.1	97.3	98.4
2012	102.6	n/a	102.6	82.0	96.9	82.8	95.6

²² See eg. 2012 Annual Report - Chairman's Report, Managing Director's Report, and OneSteel Steel & Recycling At a Glance.

²³ Available at <http://www.arrium.com/~media/Files/ASX%20Announcements/FY2014/Annual%20Report%20-%202013%2030%20Sep%202013.pdf> (**2013 Annual Report**)

²⁴ 2013 Annual Report at p.25.

²⁵ Application, Part A-5 (2)

2013	99.2	n/a	99.2	77.0	95.4	78.1	91.8
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- 4.13 What these figures demonstrate is that:
- (a) the overall market has declined due to the current market cycle;
 - (b) the Applicant's market share has increased whilst those of the dumped imports have declined during the injury year nominated by the Applicant (2013);
 - (c) considering the base year, the sale quantities of 'dumped' imports in the 2013 year have dropped (by 23%) more than those of the Applicant (by 0.08%); and
 - (d) the trend of dumped imports has been declining since 2010 year on year, which is hardly demonstrative of price undercutting, or of the Applicant being a price taker.
- 4.14 Two points ought be made. First, as noted in the Ministerial Direction on Material Injury,²⁶ it is necessary for injury to be greater than that likely to occur in the ebb and flow of business in order for it to be material. The Applicant's injuries are not.
- 4.15 Second, an increase in market share for a domestic producer is not the usual result of price undercutting. Indeed, the drop in sale quantities of 'dumped imports' makes the Applicant's claim of price undercutting and suppression unsustainable and illogical. One would rationally expect that the sales quantities of dumped imports would not have fallen by a greater margin than the Applicant's. Rather, the sales quantities of the dumped imports subjected to any price undercutting as claimed, would more naturally have increased.
- 4.16 It is submitted that the reason for this is that the tables of price and cost variations provided by the Applicant reflect the market cycle, not price undercutting. Significantly, this is the explanation for the Applicant's performance advanced by its parent company at a corporate level. Arium's 2012 Annual Report contains not a single reference to 'dumping'. However, it makes repeated reference to the 'challenging external environment' caused by weak domestic demand and a high Australian dollar.²⁷ The 2013 Annual Report repeats this. The 2013 Annual Report's statement regarding the outlook for the Applicant is informative, and is set out in full below:²⁸

"We expect generally weak domestic and international steel markets to continue through the first half. However, domestic construction markets are expected to slowly recover in FY14 after experiencing the impact of weaker activity in the resource and non-residential construction sectors in the prior half."

²⁶ Australian Customs Dumping Notice No.2012/24

²⁷ See eg Chairman's Review at p.6, and Managing Director's Review at p.8.

²⁸ 2013 Annual Report, p. 26.

Earnings in FY14 are expected to benefit from further cost reductions and operational improvements, as well as from the impact of a sustained lower Australian dollar. We expect the full benefit from the lower Australian dollar from the second quarter.

The Steel businesses have significant leverage to improved demand, particularly from domestic construction.

Over the medium to longer term, we remain confident we will see improvements in the fundamentals for key domestic and international steel markets as economic conditions improve."

- 4.17 If the dumped imports were responsible for the injury alleged by the Applicant, it would not believe that it would have "*significant leverage to improved demand*". The Applicant's emphasis on demand conditions rather than competition belies its claims that the injuries it suffered were anything but the effects of an unfavourable business cycle.
- 4.18 A close examination of the details of the injuries claimed by the Applicant reveal they have more in common with symptoms of broader market conditions than with price undercutting.

Price suppression and depression

- 4.19 The Consideration Report states that:²⁹

"Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented."

- 4.20 The Commission found that there was price depression and suppression on the basis of the relationship between revenue and CTMS and unit sale price and unit CTMS.
- 4.21 Nippon considers that the charts set out in the Consideration Report demonstrate the effect of forces operating in the market which limited the ability of the Applicant to raise its prices to cover cost increases. These forces have nothing to do with the importation of goods by Nippon. As noted above, this appears to be the view of the Applicant itself, at least at a corporate level.
- 4.22 Nippon also notes that during the investigation period, the Applicant was a segment of a vertically integrated parent company, Arium.³⁰ The Applicant sourced its raw materials from the mining arm of Arium,³¹ and sold a large portion of its product through the distribution arm (OneSteel Metalcentre).³² The non-confidential version of the Application contains no assurances that inputs were provided to the Applicant at market price. Likewise, the Applicant states that its sales to OneSteel Metalcentre are "*based on the monthly agreed import parity*

²⁹ Consideration Report, Part 6.6.1.

³⁰ 2012 Annual Report, pp. 16-27

³¹ 2012 Annual Report, p. 24

³² 2012 Annual Report, p. 77.

prices established with its external customers." It is not apparent, however, what this means. For instance, it is unclear on the face of the Application if the Applicant charged OneSteel Metalcentre the premium it claims it charges external customers.³³

- 4.23 Nippon expects that the Commission will verify whether the input costs incurred and prices charged by the Applicant when dealing with related companies are fair, or are affected by the identity of those companies.
- 4.24 Nippon notes that for the financial year ended June 2013 prices went down by more than costs. The Applicant has sought to characterise this as the effects of dumping biting harder in a contracting market. Costs are however not inherently coupled to market price. It cannot be simply assumed that in a contracting market it is possible for the Applicant to increase its prices to recover its costs, or even to reduce prices commensurate to costs.

Profit and profitability

- 4.25 The Commission found that the profits data provided by the Applicant *"support[s] OneSteel's claim of substantive profit and unit profitability deterioration."*³⁴
- 4.26 As the deterioration in profitability is linked to pricing, Nippon submits it is a symptom of the business cycle for the same reasons as set out above with respect to price suppression and depression.
- 4.27 Moreover, Nippon considers that the Applicant's costs are exaggerated. The Applicant underwent restructuring in 2012 which included *"a review of our steel facilities footprint"* and *"a re-alignment of our fixed cost base."*³⁵ In 2013, the Applicant underwent further restructuring and merged with another arm of its parent company.³⁶ It can only be assumed that the costs of undertaking these restructures was reflected in the in the Cost to Make and Sell (CTMS) measure that forms the basis for the profit calculations in the Consideration Report. This would have had the effect of temporarily inflating costs in 2012 and 2013, which would skew the profits for those years. It also should be noted that the Applicant included distribution costs in its CTMS. As a separate arm of the parent company undertook much of the distribution during the investigation period, the Applicant must clarify what distribution costs it included in the CTMS.

5. Other inadequacies

- 5.1 The Applicant alleged that it suffered injury in the form of:
- (a) reduced domestic revenues;

³³ Above para 3.13

³⁴ Consideration Report Part 6.8.1.

³⁵ 2012 Annual Report p. 24

³⁶ 2013 Annual Report p.25

- (b) reduced production capacity utilisation;
- (c) reduced employment; and
- (d) reduced attractiveness for reinvestment.

5.2 Nippon observes that although the Applicant seeks to attribute sole responsibility for reduced employment to the dumped imports, it advances a different explanation in Arium's 2012 Annual Report. There, the reduction in employment in 2012 is attributed to:³⁷

"A Review of our steel facilities; a re-alignment of our fixed cost base; and an alignment of our operating levels with expected market demands..."

5.3 Nippon also notes that the Applicant underwent a corporate restructure during the 2013 Financial Year, combining its Steel and Recycling divisions.³⁸ Given the small reduction in employment during that year, Nippon would expect the Applicant to provide further evidence regarding what portion of the reduction in employment was due to the restructure.

5.4 Nippon notes that the information provided to the Commission in respect of these alleged injuries covers products other than the like goods. In view of this, no conclusions are open to be drawn at this stage of the investigation. However, the Commission whilst expressing reservations about also stated that:

"Notwithstanding, this does not diminish the assertions made by OneSteel in relation to the injury it has suffered."

5.5 Given how little weight assertions should be given, it would be difficult to 'diminish' them further. As the Commission's Guide to evidence states, assertions are "unreliable" and are to be accorded "little evidential value".³⁹

5.6 If the Applicant wished to put forward a claim for these injuries it ought to have provided the evidence necessary to support it. This would involve material regarding the like goods. It can be reasonably assumed that this information was in its possession. The Commission ought to have rejected the application until such time as this information was provided.

6. Conclusion

6.1 Nippon submits that the treatment of the issues of price undercutting and causation in both the Application and the Consideration Report was incomplete and inadequate. The Applicant's failure to provide the necessary information and mention crucial issues unfavourable to it has resulted in Consideration Report No. 223 containing critical legal, factual and evaluative errors.

³⁷ 2012 Annual Report, p. 24.

³⁸ 2013 Annual Report, p. 25.

³⁹ Guidelines on the examination of a formally lodged application, Attachment 1- Evidentiary Standards