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31 October 2017

The Director
Anti-Dumping Commission
Investigations 2
Industry House
10 Binara Stroot
Canberra
Australian Capital Territory 2600

By email

Dear Director

Nervacero S.A. - alleged dumping of steel reinforcing bar
Comments regarding the Australian industry's injury claims

As you know we represent Nervacero S.A. ("Nervacero") in this investigation.

This submission deals with the following subject matter:

The Anti-Dumping Commission ("the Commission") has initiated an investigation into the alleged dumping of steel reinforcing bar ("the goods" and "rebar") from selected countries, including those exported by our client from Spain. The application for the investigation ("the Application") was lodged by OneSteel Manufacturing Pty Ltd (Subject to Deed of Company Arrangement) (hereafter "OneSteel" or "the Applicant").

The Applicant has alleged that dumped goods exported by Nervacero have caused material injury to the Australian industry. This allegation is without basis. It is not supported by the allegations that appear in the Application, nor by the facts as they have subsequently become known.

We submit that the Applicant has not demonstrated that material injury is attributable to the goods exported by Nervacero, or at all.

Our client now makes the following comments on the Australian market and the Applicant's alleged injury.

A Injury cannot be attributable to Nervacero's exports

1 Nervacero produces a distinct, specialised product

As stated in the notice initiating this investigation, the subject goods are:[1]

> *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 covered by this application include all steel reinforcing bar meeting the above description regardless of the particular grade, alloy content or coating.*
>
> *Goods excluded from this application are plain round bar, stainless steel and reinforcing mesh.*

This definition is broad, and includes goods manufactured and exported to Australia by Nervacero. However, that is not to say that all imported products within this definition compete with the products manufactured by the Australian industry. Where they do not compete – such as when they are of a type that is not manufactured by the Australian industry, and are uniquely suited to a particular processing solution - the imports cannot be said to be causing injury in the required sense.

Nervacero manufactures hot rolled deformed bars in coils using spooler technology ("spooler coils"). This is a highly specialised product, with a specialised production process. The spooler technology allows for a "twist free" method of winding the steel reinforcing bar in coil formation. More technically, the longitudinal axis of the bar of the hot rolled/on line quenched or "control cooled" bar is evenly distributed on the spooler drum in subsequent, regular, homogenous and compact layers. This produces a very compact packaged coil directly from the rolling mill, without any additional post process. It also allows for the production of coils with much higher tonnages, with diameters of up to 25 mm.

Thus, the spooler coils are produced by way of a different, highly innovative production process in comparison to regular steel reinforcing bar in coil form. The so called "spooler lines" at Nervacero's factory allow for the continuous production of "as rolled" spooled coils. This production takes place directly from the rolling mill production line in a continuous hot rolling process. These production lines and methods were inspected by the visit team at the time of the verification of Nervacero, and the utility delivered to customers by coils made by the "spooler" process was explained to the visit team.

Images of the spooler coils below illustrate the clear difference between steel reinforcing bar in coil produced by an ordinary or standard production process (the process adopted by the Australian industry) and the process used by Nervacero. There is a very clear and visible difference between the two types, in terms of the compactness and layering of the coils.

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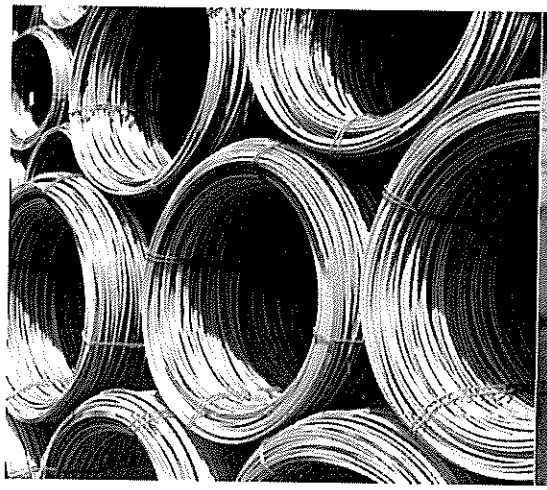
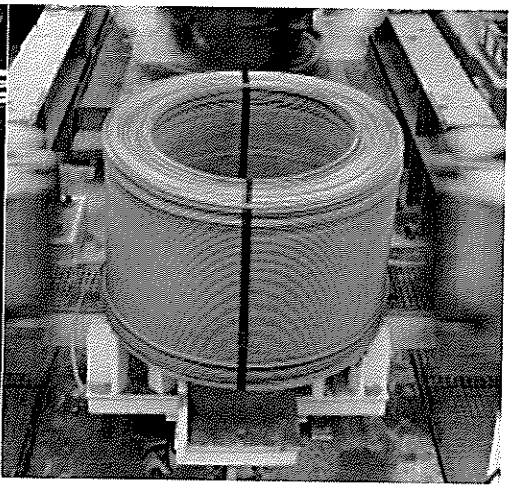
1 See initiating Notice, page 2.

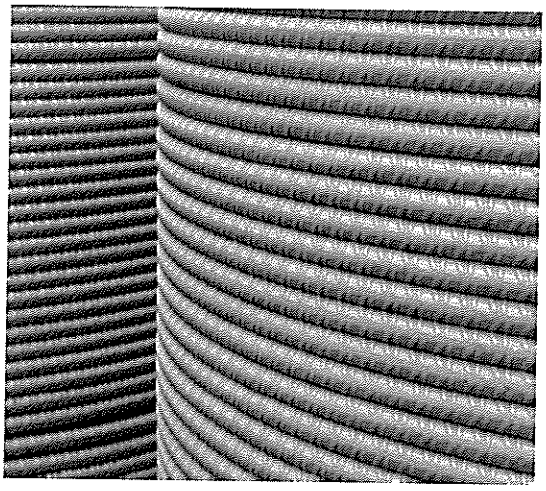
Photograph 1



Photograph 2



Photograph 3



Photograph 1:

Typical hot rolled deformed bar-in-coils ("DBIC").

Photograph 2:

Nervacero's DBIC produced with spooler technology during the final stage of the production process (application of metal strips).

Photograph 3:

Close-up of Nervacero DBIC showing the elevated degree of compactness of the coil, with spooling arranged in perfect layers, and completely "twist free" (meaning that the longitudinal and transversal ribs of the different layers maintain their parallelism).

Spooler coils are a unique product. They provide the following benefits to the fabricated goods industry:

- Due to the lack of twist in the coil, the coils are easier to process and there is no bending out of plane after the de-coiling process. This reduces the number of defective pieces produced by the fabricator, allowing for higher processing speeds and higher productivity.
- A full range of sizes (of diameters up to 25mm) are available in the same format and with the same characteristics.
- Due to the higher tonnage per coil and the possibility to use all diameters needed, less changes during processing of the coil are required. This allows for a lower number of machine adjustments, higher productivity and fewer "leftovers".

- The spooler coils are larger and more compact than "loose" coils. Even though they have more tonnes of steel per coil, they are safer, and easier, to manipulate, transport and stack. This provides cost savings in both transport and storage.

The spooler coils are physically different and easily distinguishable from the steel reinforcing bar in coil form produced by the Australian industry. **[CONFIDENTIAL TEXT DELETED – customer perception of product differences]**

We submit that it is the core characteristics of Nervacero's spooler coil that dictate its choice by customers **[CONFIDENTIAL TEXT DELETED – customer perception of product differences]**. It cannot be said that injury has been caused to the Applicant by Nervacero's specialised coil products. Product differentiation rather than any alleged price undercutting is the reason that Nervacero product has found a niche position in the Australian market. It would be a false comparison, for the purposes of this investigation, for the Commission to simply assume that products having the same tariff code always compete on price from the perspective of the end-users concerned.

2 Nervacero exported steel reinforcing bar in coil form only

Without prejudice to the point above, the Application correctly notes that the goods subject to this investigation are made of up steel reinforcing bar in the forms of both straight ("rebar straights") and coil ("rebar coils"). Importantly, these are two different products with their own unique markets. This distinction is understood by the Applicant, with the Application providing separate information and analysis for the two products.

The Commission's injury analysis must distinguish and analyse each of the products separately. Where analysis includes both rebar straights and rebar coils it will result in a false comparison. Rebar coil is used in higher tech and higher volume facilities that adopt continuous fabrication processes with automatic straightening and cutting machines, set up for the purpose of mass production at high rates, as well as the production of specialised fabricated products (in terms of their shape and dimensions). The preliminary analysis in the Commission's consideration report ("Consideration Report"),[2] and the Applicant's verification report ("Verification Report")[3] do not highlight nor appreciate this distinction. Consequently, we submit that the Commission's own preliminary comments on injury do not accurately reflect the actual production and market circumstances pertaining to these separate types of goods during the period.

[CONFIDENTIAL TEXT DELETED – product details]

3 Nervacero is not the source of the Applicant's harm

In its material injury allegation, the Applicant argues that while its prices have increased, its costs have also increased but at a higher rate than its prices.[4] The Applicant considers that, rather than its costs being too high, the issue is that its prices have not increased enough. The Applicant places the blame for this on the foreign exporters subject to this investigation. The Applicant's position must therefore be that the allegedly dumped exports have caused material injury by suppressing OneSteel's ability to further increase its prices.

Such a contention is not borne out by the facts.

The Applicant does not dispute that its prices have increased over the investigation period.[5] For rebar coils, **[CONFIDENTIAL TEXT DELETED – product details]** both the Applicant's ex-works

2 See Consideration Report.
3 See Verification Report.
4 See Application, pages 32 and 44.
5 *Ibid.*, pages 32, 40 and 44.

prices[6] and its unit net sales revenue[7] have increased. And yet, the argument persists that the prices have not increased *enough*.

In raising this argument, the Commission must consider the following, as a matter of logical necessity:

- What caused OneSteel's rebar coils prices to increase at a lesser rate than desired?
- What was the relevant quantum of injury that has arisen?

It is incumbent on the Commission to consider these questions thoroughly.

It is evident from even a cursory viewing of the Application that the Applicant is brushing over the influence of exporters that are not subject to this investigation. In the rebar coils market specifically, the Application demonstrates that the goods are exported from South Korea in large quantities at FOB prices that are lower than the FOB prices of Nervacero.[8] Further, the Application shows that for ten of the twelve months of the investigation period, goods from South Korea were offered on an FIS basis at the same or lower price than goods from Nervacero.[9] It is clear that any suppression of price, if indeed it has occurred, was and is already present in the market, and that it cannot be said that it is "added to" by Nervacero's exports.

Notwithstanding the comments above, should the Commission move on to the second consideration it will of course continue to consider the influence of the exports from South Korea and other sources on the market. Where these goods are sold at prices which are the same, or lower, than the prices of Nervacero, no injury can be attributed to our client.[10] If the Commission does consider it viable to quantify the injury, Nervacero could only logically have caused injury to the extent that its prices were lower than those exported from South Korea, and other sources. The occurrence of this could only be very minor in the context of the prices of South Korean exports and the small market share held by Nervacero.[11]

4 [CONFIDENTIAL TEXT DELETED –product differences]

[CONFIDENTIAL TEXT DELETED – customer information] While OneSteel is the sole Australian manufacturer of the goods, it is our understanding that the Applicant does not manufacture rebar coils of 20mm diameter.

As such, and without detracting from everything we have had to say about the superiority and differences of Nervacero's spooled DBIC as compared to the Applicant's loose coil, it is clear that Nervacero could not have caused injury to the Applicant at all by reason of its exports of 20mm rebar coils to Australia during the period. The Applicant does not have a comparative product in the market.

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6 *Ibid.*, page 40.
7 *Ibid.*, page 50.
8 *Ibid.*, page 64.
9 *Ibid.*, page 66.
10 Article 3.2 of the *Anti-Dumping Agreement* refers:

> *With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.* [underlining supplied]

11 The Applicant is an importer and reseller of imported rebar (see Application, page 20). The Applicant does not account for or explain its own activities in its analysis of the market and its financial condition. The nature of these imports and their prices and quantities, and the degree to which they are self-injurious or profit-making for the Applicant, should be taken into account in the Commission's analysis.

[CONFIDENTIAL TEXT DELETED – customer information][12]

Therefore, if the Commission is minded to find that injury has been caused by Nervacero's exports, a course of action which we submit is not available to the Commission in any event, the Commission can have no option but to exclude 20mm rebar coils from the scope of the investigation and from its injury analysis.

B The Applicant has not been injured in a general sense

The Application paints a straightforward picture of the Applicant's position. Put simply, since 2013 OneSteel has significantly increased its:

- sales quantities;[13]
- overall sales values; [14] and
- production volumes,[15]

of rebar coils.

Further, with respect to all of the goods under consideration during the investigation period, OneSteel has improved its:

- revenue;[16]
- return on investment;[17] and
- productivity.[18]

These are not the symptoms of distress. However damaged the company may be as a whole, the facts do not show that material injury has been suffered in the rebar coil market.

The Applicant has alleged that it has suffered from material injury in near every form available.[19] Notably, even in its preliminary assessment the Commission has rejected most of these claims.[20] We believe that further interrogation of the information, specific to the rebar coils market, will repudiate these claims further.

C The Applicant's own costs and inefficiencies

As mentioned, the Applicant's costs have increased at a higher rate than its prices. The Application attempts to focus all attention on the question of why prices have not risen to the levels desired by the Applicant. However, we submit that little or no attention has been given to a consideration that must be more important, in the context of rising prices, which is this – what has caused the Applicant's costs to be as high as they are, and to increase as they have done during the period of investigation?

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12 See relevant invoices, attached **[CONFIDENTIAL ATTACHMENT].**
13 See Application, page 23.
14 *Ibid.*, page 24.
15 *Ibid.*, page 31.
16 *Ibid.*, page 34.
17 *Ibid.*
18 *Ibid.*, page 35.
19 *Ibid.*, page 61.
20 See Verification Report, page 19.

The Applicant bases its argument on the importance of the disparity between the increases in both its price and its costs. Thus, the Applicant's costs should also be carefully interrogated by the Commission.

We respectfully ask the Commission to consider:

- whether the Applicant's purchase price of steel scrap is too high - the Commission should carefully consider not only the fact of the increase, which would have nothing to do with the imported goods, but also the intercompany nature of those price increases;
- whether the Applicant's conversion costs are too high - high conversion costs would demonstrate inefficiencies that equally have nothing to do with imported goods, but rather are an internal impediment facing the Applicant itself; and
- the impacts of the Applicant's highly publicised administration process.

1 At what price is the Applicant buying its steel scrap?

The starting point for the production of the goods by OneSteel and exporters alike is steel scrap. Once purchased, steel scrap goes through the various conversion processes involved to be made into the final rebar product.

There is no explanation in the industry report of the increase in the Applicant's unit CTMS in the investigation period, an increase which exceeded its revenue increase over the same period. In the absence of any explication as to the nature of the cost increase, either in the Application or the Verification Report, it is necessary for us to engage in some guesswork of our own. Although we would greatly regret any inaccuracy in the suggestions we are about to make, we do nonetheless ask the Commission to undertake its own investigation in order to satisfy interested parties such as Nervacero that a proper investigation of the important points that we are about to raise has been undertaken.

The Applicant purchases steel scrap from its own subsidiaries, making use of its *"integrated supply chain"*,[21] with the Applicant's website indicating that an entity by the name of "Liberty OneSteel Recycling":

> *...handles more than 1.4 million tonnes of ferrous and non-ferrous scrap metal every year by processing and distributing it for sale to international markets and Liberty OneSteel-owned domestic steel mills and manufacturing facilities.*[22]

In an Ai Group submission to the Senate Economics References Committee inquiry into the future of Australia's steel industry (February 2016) the following was said:

> *These trends suggest that raw material purchase costs for the major steel manufacturers will continue to fall relative to revenue in the short to medium term, although input price volatility is likely to remain a key concern. Vertical integration has allowed some businesses to lessen the negative effects of input price volatility. Arrium, for example, operates within close proximity to its own iron ore mines. The company also has recycling divisions in eight countries, providing further control over its sourcing of raw materials for steelmaking.*[23]
> [underlining supplied]

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21 See the Applicant's website at https://www.libertyonesteel.com/about-us/.

22 See the Applicant's website at https://www.libertyonesteel.com/about-us/our-businesses/.

23 See Ai Group Submission to the Senate Economics References Committee inquiry into the future of Australia's steel industry (February 2016) at http://www.aph.gov.au/DocumentStore.ashx?id=7170bb30-abc4-4bf3-a687-113187f77cd2&subId=409076.

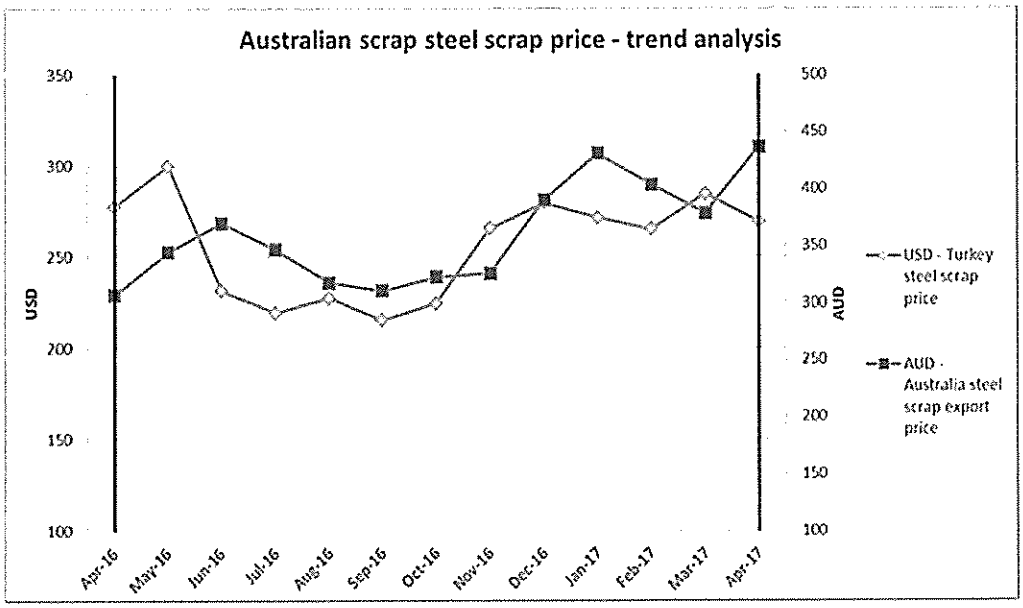
Nowhere in its Application for this investigation does the Applicant mention that it purchases its scrap steel from its wholly owned scrap merchant subsidiary, merely stating:

> *OneSteel uses its own iron ore to produce billets manufactured at its Whyalla steelworks and produces billets at Laverton and Sydney from purchases of steel scrap. The iron ore and steel scrap are sourced locally and account for the significant proportion of total raw material goods used in the rebar manufacturing process.*[24] [underlining supplied]

Nowhere in the Application does the Applicant mention that it is in a position to "control" its scrap input prices, as admitted by the Ai Group submission.[25]

There is no examination or mention in the Verification Report of the basis of the Applicant's purchase price of scrap steel, and whether that price reasonably reflects competitive market costs or is instead distorted by non-market considerations such as might exist in related party transactions of the type that the Applicant appears regularly to engage in, given the vertically integrated nature of the corporate group to which it belongs.

Our client wishes to question the Applicant's purchase price for scrap steel, in two ways. The graph below compares publicly reported steel scrap prices for Turkey[26] and for Australia[27] over the investigation period.



Economic commentators could no doubt mount a number of explanations as to why the reported Australian market price for steel scrap was considerably higher than the Turkish price over most of that period. However that information is not provided solely for the purposes of price comparability. Instead, we simply wish to draw attention to the quite different price trend with respect to Australian prices as compared to Turkish prices at the key moment that the Applicant's costs increased, being the Oct-Dec quarter of 2016. Why is this?

The second question we ask relates to the *actual* scrap price paid by the Applicant. To be fair, we cannot verify the accuracy of the Australian steel scrap information in the graph, either as to the level

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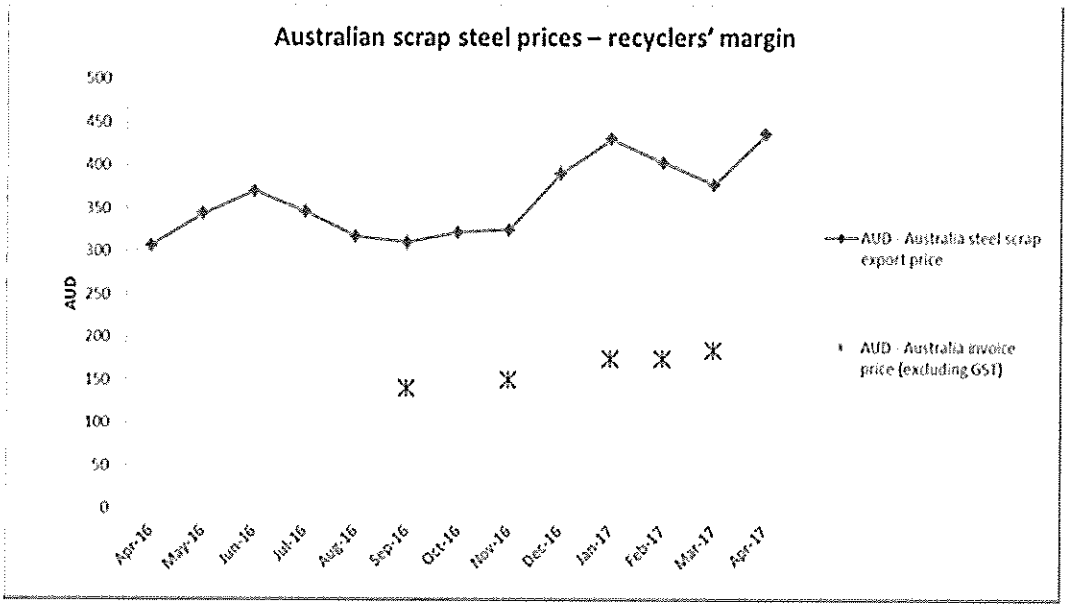
24 See Application, page 18.

25 We understand OneSteel is an active member of Ai Group, and note that OneSteel's data is referenced in the submission.

26 Source: Platts.

27 Source: TradeData International.

of the price, or the specific goods, or the terms and conditions of sale that are assumed.[28] However, a more important question, and one that the Commission should be able to test based on its sources, is whether the Applicant's actual purchase price for scrap steel was reasonable in terms of other, independent market prices at the time. In this regard, we have marked, on the graph below, selling prices for HMS scrap steel (heavy melting steel) **[CONFIDENTIAL TEXT DELETED – data source]**. Please note that these are collection prices (prices paid by recyclers), and not prices of recyclers to producer/s for smelting or for export.



As can be seen, the margin for collection and sorting costs, and for profit, appears to be a very large one. The Commission is requested to ask that the financial records specific to the entity known as Liberty OneSteel Recycling be provided to it by the Applicant, and to consider those records, in order to better understand whether the overall "profit" of the activities involved with rebar production is greater *within the Liberty OneSteel group* than reflected *only in the records of the Applicant itself.* We make this request of the Commission in light of these matters:

- the Applicant buys its scrap steel and processes it from and through related companies;
- it has been reported that the Applicant is in a position to "control" its sourcing of scrap steel;
- Australian prices for scrap steel may have been higher than international prices in the investigation period;
- Australian prices for scrap steel spiked in a way which was not reflected in the price trend of the other international index we have referenced;
- the Applicant's unit CTMS shows a large and so-far unexplained increase from the Oct-Dec 2016 quarter to the end of the investigation period; and
- steel billet, made from steel scrap, constitutes a very significant proportion of the cost of finished rebar product.

[28] Nonetheless if Australian prices are uniformly higher than those on the rest of the world, then the Commission would have to ask itself whether market forces were freely operating in the market, or whether the dominance and commercial practices of the major incumbents, including the Applicant's related party supplier Liberty OneSteel Recycling, were in some way distorting the price.

2 The Applicant's conversion costs

As well as considering the legitimacy of the Applicant's steel scrap price, the Commission is also requested to consider OneSteel's costs to convert the steel scrap into the finished goods. An indicator of the efficiency of a manufacturer is what is called the "spread" between the steel scrap purchase price and the finished goods price. The larger the spread, the less efficient the manufacturer is considered to be.

In this regard it is generally considered that the Australian industry has a larger spread than the rest of the world. Historically, the spread amongst European producers was around USD200-220 per MT. However since 2008, with higher competition and lower input costs, the spread has reduced to around USD170-180 per MT, and even fallen as low as USD140 per MT. During the investigation period, the European spread was between USD148-176 per MT.[29] The Commission has the Applicant's data and can compare the spread of the Australian industry to that reported for Europe, and the rest of the world.

If, as is considered likely, the Australian industry's conversion cost spread is wider than that enjoyed by companies in the rest of the world, the Commission should consider the cause of this disparity, and whether it is fair and reasonable for the Applicant to continue to blame a decade of loss-making within its manufacturing operations on imports. An internal inefficiency such as this, which renders the Applicant naturally less competitive, cannot be said to have been caused by imports.

3 The costs and impediments of the Applicant's administration

The Australian industry's difficulties are longstanding and have been publicly reported on at length. OneSteel is a customer and competitor of Nervacero in the international rebar industry, and our client does not "celebrate" the difficulties it has faced and continues to face.

That said, it is abundantly clear to all concerned that the investigation period corresponds with the period in which the Applicant was going through a very public process of external administration. The significant expense and disruption of such an exercise must ultimately be carried by the business. In these circumstances the Commission should be concerned to ensure that it has undertaken a sufficiently forensic examination of the Applicant's accounts, in order to better understand the costs generated by this process. In one report it has been suggested that the Applicant's administrator, Korda Mentha, was billing up to AUD1 million per week for its services.[30] The Applicant conducted day to day operations during the investigation period burdened by the costs of its administration process, and under the cloud of that uncertainty. Every decision made within this period was clouded by these factors.

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The consideration of material injury is governed in the first instance by Section 269TAE of the *Customs Act* 1901, which sets out factors the Minister *"may"* have regard to. This section is supported by the "Ministerial Direction on Material Injury" which provides three points of particular relevance.[31]

- *material injury is injury which is not immaterial, insubstantial or insignificant;*
- *the injury must be greater than that likely to occur in the normal ebb and flow of business;*
- *identifying material injury will depend on the circumstances of each case.*

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29 Source: Platts.

30 See *'Arrium shareholders demand relisting, offer alternative CEO'*, ABC (18 May 2018) at http://www.abc.net.au/news/2017-05-18/arrium-shareholder-revolt-demands-relisting/8538666.

31 See New Ministerial Direction on Material Injury, ACDN 2012/24.

The materiality of injury is contextual and based on the situation in each case. What may be considered material for one case may not be so for another. This is evident based on the legislative wording which requires the Minister to carefully and deliberately exercise his or her discretion when assessing the factors considered to be relevant. This is also explicitly stated in the Ministerial Direction, as noted above.

We respectfully submit that the Application has not demonstrated that material injury has been suffered as a consequence of exports of rebar coils by Nervacero, for the reasons we have put forward.

It is understandable that OneSteel is seeking to turn around its fortunes, and it has had notable help from Federal and State Governments in doing so. But any turnaround cannot rely on using the anti-dumping system as a weapon against all competition. The Applicant must look to rectify its own processes and inefficiencies rather than being handed unnecessary and unwarranted advantages over legitimate competition.

Yours sincerely

Charles Zhan
Senior Associate