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The Director
Investigations 2
Anti-Dumping Commission
Industry House
10 Binara Street
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Australian Capital Territory 2601

By email

Dear Director

Sidenor Steel Industry S.A.
Comments on SEF 418 – steel reinforcing bar from Greece

We have been instructed by Sidenor Steel Industry S.A. ("Sidenor") to respond on its behalf to the abovementioned Statement of Essential Facts.

A Introductory comments

As is already apparent from Sidenor's submissions on the public record, Sidenor is a manufacturer of steel reinforcing bar ("rebar") in Greece. Sidenor exported a small quantity of rebar to Australia during the period of investigation ("POI") in this matter.

Sidenor disagrees with the preliminary findings of the Anti-Dumping Commission ("the Commission") in Statement of Essential Facts and Preliminary Affirmative Determination 418 ("SEF 418") published in this investigation. The nature of its disagreement is set out in this letter.

Our client calls on the Commission to reconsider the facts and circumstances that have been placed before it in this investigation with the benefit of the submissions it received before the publication of SEF 418 but indicated that it had not considered, and this and the other submissions it has received since, in a rational and objective manner.

Sidenor only sold to two importers in the POI, namely Neumann Steel and SmartReo. The volume of its exports to Australia was only **[CONFIDENTIAL TEXT DELETED – number]** MT. Sidenor's imports represented only **[CONFIDENTIAL TEXT DELETED – number]**% or **[CONFIDENTIAL TEXT DELETED – number]**% of OneSteel Manufacturing's production, on the outside assumptions, respectively, that OneSteel Manufacturing's production during the POI was from **[CONFIDENTIAL TEXT DELETED – number]** MT or **[CONFIDENTIAL TEXT DELETED – number]** MT. Sidenor is entirely profit-motivated. It has always sought to compete fairly and never with the intention or effect of "injuring" its business competitors. The Commission's own investigations appear to establish that the prices of Sidenor's rebar spooled coil at the point of competition with the Australian industry ("OneSteel") cannot have caused injury to OneSteel, in the circumstances that existed in the POI, in any material sense.

Our client requests that the Commission give these submissions its closest and most careful attention and that, as a result, the Commission should terminate this investigation as against Sidenor on the basis that any injury caused by Sidenor's exports was negligible.

B Strong sales performance of OneSteel in an expanding market

Figure 3 in SEF 418 shows steadily increasing sales on the part of OneSteel over the period from 2013 to 2016. SEF 418 quantifies the overall increase as having been in the order of 45%. From 2015 to 2016 OneSteel's sales volumes increased by 18%, in a market that increased by approximately 25%.

The Commission concludes from this that OneSteel did not lose sales volume in an absolute sense, but that *"it has experienced injury in the form of reduced market share for rebar in the Australian market over the investigation period"*. To support this finding as being evidence of injury, the Commission quotes its own Dumping and Subsidy Manual, as follows:

> *Anti-dumping or countervailing action is possible in cases where an industry has been expanding its market share, and the dumped or subsidised imports have slowed the rate of growth – a decline in growth may be as relevant as the movement from growth to decline.*

Relying on this quote does not seem to us to be useful. The question, at law, is whether alleged dumping has caused material injury. Simply referring to a statement that anti-dumping or countervailing action is possible if the imports concerned have slowed the rate of growth of the domestic industry's market share (ie the domestic industry has a reduced market share) does not prove, in this case or in any particular case, that the domestic industry has been caused injury by that circumstance. For example, the domestic industry may find that it cannot easily expand or speed up its production, either because of endogenous or exogenous factors. Indeed, OneSteel has suffered from both. For example, OneSteel appears to have experienced capacity constraints as the market demand in Australia has increased. We would also suggest that increasing production in a given facility by 18% in a 12 month period is not necessarily an easy thing to manage. Also, OneSteel suffered from what are referred to in SEF 418 as "weather events" during the POI, which also would have limited its ability to increase its production directly in line with the market trend. It may have had difficulty increasing its market penetration for a number of other reasons. It may not have wanted to increase its market share, given the marketing costs and sales risks that would require, and considering it was doing so well in any case.

In this regard, OneSteel's own imports of coil are telling and cannot be disregarded. The implication of this is that OneSteel could not supply the market requirements from its own production, or made a conscious decision not to do so. We submit that this is very clear evidence of the irrelevance of a market share decline, in the circumstances of this case.

A reduction of the market share of a domestic industry at a time when it is enjoying escalating sales is not evidence of injury merely because it is a declining statistic. Intuitively, an increase in sales volume of 18% in the POI signifies good performance, and not injury. Thus, our client does not agree with the

finding that OneSteel experienced injury in the form of reduced market share, and asks the Commission to critically review that finding.

C Price undercutting by Sidenor as might cause material injury is not evident

The price undercutting findings with respect to Sidenor's exports in SEF 418 –noting that Sidenor's exports were only of spooled coil - can be pieced together as follows:

1 *…for three months of the investigation period, the import offers in the market that influenced OneSteel's pricing were exclusively from an exporter not subject to this investigation*

This is ambiguous as to whether the import offers referred to undercut those of OneSteel or not. However, going by the severe "duty absorption" claims made by OneSteel in its *Application for an anti-circumvention inquiry into avoidance of the intended effect of duty of steel reinforcing bar exported from the Republic of Korea*, it is likely that the Commission meant to say, in SEF 418, that the import offers here referred to relate to exports from Korea by Daehan Steel Co., Ltd, and that they did undercut OneSteel's prices and therefore had a downward influence on OneSteel's pricing. Going by the months for which no data has been included in Figure 10 in SEF 418, the months concerned were May, July and August 2016.

2 *…import offers from dumped sources subject to this investigation were lower than OneSteel's weighted average price for six months of the investigation period*

On the basis that it was only exports from Greece by Sidenor and exports from Spain by Nervacero S.A. that were of rebar in spooled coils, we can say that it was either or both of these exporters to which reference is being made in this extract from SEF 418. No separation of exports from Greece and Spain is provided in SEF 418. However, by having reference to Figure A-9.6.3(b) of OneSteel's application, it can be seen that in the three months where FIS price offers for Sidenor imports are shown Sidenor's prices are the same or marginally higher than the FIS price for Daehan (October 2016), the same or marginally lower than the FIS prices for both Daehan and Nervacero (November 2016), and lower than the FIS prices for both Daehan and Nervacero (February 2017). This means that it was only in one month of the six months referred to – and therefore in only one month in the 12 months of the POI – in which the FIS price for Sidenor imports was appreciably the "lowest" in the market. On the two other occasions where a Sidenor FIS price offer is shown, the price offer with respect to Deahan's imports is the same as Sidenor's.

3 *There was no undercutting by Greece for 8 out of 12 months of the investigation period. This includes the months where there were no imports from Greece.*

The wording in SEF 418 is opaque. With respect to *"Spain"* (Nervacero) and *"an exporter not subject to this investigation"* (Daehan, we assume), SEF 418 clearly states the number of months that the exporter concerned did undercut OneSteel's prices. However for Sidenor, the extract we have quoted advises when Sidenor did not undercut OneSteel's prices, and not when it did. The extract suggests that in some of those eight months there were no imports from Greece, which is odd because there would be no need to state that there was no undercutting by imports from Greece in a month in which there were no imports.

It is not easy to assemble the puzzle that is made up of these differently described findings, but it would seem to us that the FIS price for Sidenor rebar coil may have been the lowest in the market in one month of the 12 months of the POI. This, we submit, does not provide evidence of material injury to the Australian industry caused by Sidenor's exports, on any measure.

D Non attribution principle cannot be ignored

SEF 418 oddly states:

> *For the purposes of the analysis, offers from countries not subject to this investigation, and those that related to undumped goods from countries subject to this investigation were excluded as they cannot be considered to be causative in relation to injury due to the dumped goods.*

With respect, we have to say that we do not understand this at all. Section 269TAE(2A) of the *Customs Act 1901* ("the Act") provides, in part, as follows:

> *In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:*
>
> *(a) the volume and prices of imported like goods that are not dumped; or*
>
> *…*
>
> *and any such injury or hindrance must not be attributed to the exportation of those goods.*

SEF 418 recites the way in which OneSteel's pricing system works. OneSteel is guided by and seeks to match the lowest import price offers in its pricing.[1] Whatever one might think of this approach from the perspective of rationality, it is at least clear that it will be the lowest price import offer that is causative of whatever price impact it is that OneSteel suffers through the implementation of its "market based pricing policy". On the basis of our understanding of the way in which SEF 418 describes the price undercutting that took place in the market in the POI, and consistent with OneSteel's own explanation, the FIS price of Sidenor's imports was responsible for the level of OneSteel's price, with respect to rebar coil, in one month out of the 12 months in the POI. Further, Figure A-9.6.3(b) of OneSteel's application indicates that, in OneSteel's opinion, exports by Nervacero of Spain, were offered at a price that was always equal to or higher than the price of Korean imports.

Thus, we urge the Commission to accept that material injury to OneSteel cannot be attributed to the exporters of rebar coil that are subject to this investigation, because rebar coil from an exporter that is not subject to this investigation was the price leader against which OneSteel "benchmarked" its FIS prices for 11 of the 12 months of the POI, again as shown by Figure A-9.6.3(b) of OneSteel's application. The exporters of rebar coil that are subject to this investigation were not the drivers of OneSteel's low prices in the POI. The evidence reflects the fact that the rogue element in the market, if it is appropriate to describe it like that, is *"an exporter not subject to this investigation"*. The

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[1] OneSteel adopts what might be called a "lame duck" approach. It identifies, from its sales network, import price offers with which it believes it must compete in relation to a customer, and then it reduces its list price to all of its customers to that level. This seems to be fatalistic and counter-intuitive, in that the import offer might relate to sales into only one or a limited number of contestable (unrelated) customers, and OneSteel also has a much larger related party network of tied customers who do not buy from importers. Would it not be commercially sensible to negotiate with the one customer who received the low price offer in an attempt to win that business, instead of reducing prices for all of OneSteel's business? It may be that SEF 418 documents practices which would fall within the critical elements of Section 46 of the *Competition and Consumer Act 2010*, on a *prima facie* basis, in that OneSteel has a substantial degree of power in the market, which it can exert horizontally and vertically, and which is having anti-competitive effects on exporters given the way that power is being used. The current Section 46 expressly refers to, and includes in the offence committed under Section 46, *"the supply… [of] goods… for a sustained period at a price that is less than the relevant cost to the corporation of supplying such goods…"*. OneSteel's loss making is documented by SEF 418, in historical terms and more recently in the POI.

assumption that appears to be correct, based on the application for this investigation and OneSteel's recent filing of an application for an anti-circumvention inquiry, is that it was exports and sales by the exporter/importer combination of Daehan Steel and Stemcor Australia that were responsible for any price injury of a material nature suffered by OneSteel in the POI.

The non-attribution principle of the WTO *Anti-Dumping Agreement*, as implemented in Section 269TAE(2A) of the Act, must be applied. The non-attribution wording of the Section contrasts injury caused by goods under investigation from other factors, including goods not under investigation. The Commission would fall into fatal legal error if it were to discount the effect of goods not under investigation – in this case, those from Korea that are already subject to dumping duties - because the Commission believed them to be dumped. That opinion is not open to the Commission, but even if it was the Commission cannot act on it to the detriment of the rebar coil exporters that are subject to this investigation.

E Rebar spooled coil imports cannot be cumulated with imports of straights

The differences between rebar coils and rebar straights have been explained by interested parties including Sidenor and are clear for all to see. Spooled coil – which is exported by Sidenor and, our client believes, also by Nervacero – is a different product to rebar straights. It can be used for the same purposes as rebar straights, but is not designed specifically for those purposes and is less economical in those uses than rebar straights. Rebar straights cannot be used in the automated prefabrication processes that are specially designed to take-up rebar coil.

Most importantly, OneSteel recognises that the products are subject to different cost and price considerations, and should be considered separately, in the way it has presented all of its data to the Commission. The Commission's own analysis conforms with this separation.

We also find, in this investigation, that there is a clear division between the goods exported from Greece and Spain (rebar spooled coil) and the goods exported from Indonesia, Taiwan and Thailand (rebar straights). The conditions of competition with respect to the goods exported from Greece and Spain are different to the conditions of competition with respect to the exports from the other sources under investigation. They have different costs, different price patterns and different markets. As a reflection of this, in the Australian market DBIC (deformed bar in coil) is more expensive than DBIL (deformed bar in lengths), arising we expect from the higher costs that OneSteel incurs in the production of coils, on the one hand, and the cost savings for fabricators that are associated with rebar coils, on the other hand.

The point of this explanation is to establish, and to emphasise, that the exports from Greece and Spain cannot be cumulated with those from the other sources. Pursuant to Section 269(2C)(e) of the Act, the Minister can cumulate the goods exports from Greece and Spain with the goods exported from the others only if it is *"appropriate… having regard to…. the conditions of competition between those goods"*. For the reasons we have explained, the conditions of competition are different, and the Commission cannot use the injurious effect of rebar straights – if there is any such effect – to "capture" the exports of rebar coil in any final finding, whether the rebar coil is injurious or not.

Rebar spooled coil must be considered on its own and, as we believe we have demonstrated, it was not the prices of rebar spooled coil from Greece and Spain which had the downward effect on pricing of which OneSteel complains. That downward effect was already in place, and was maintained at all relevant times, by the exports that we must all surmise were exported from Korea and sold by Stemcor Australia. These were in significant volumes and, unlike the exports from Greece and Spain, were continuously offered throughout the POI at prices which were on almost all occasions lower or at about the same level as Sidenor's exports and the exports from Spain. The Korean exports were also more highly undercutting of OneSteel's prices, at up to 17% lower, than the exports from either Greece (10% lower) or Spain (15% lower).

F Dumping margin and non-injurious price

On the basis that Sidenor's exports of rebar spooled coil have not caused material injury to OneSteel, this investigation should be terminated as against Sidenor at the earliest opportunity. That outcome would mean that issues with respect to the dumping margin ascribed to Sidenor and the Commission's non-injurious price conclusion need not be contested. Notwithstanding that, our client cannot allow the Commission's egregious dumping margin finding against it to go unchallenged.

In SEF 418, the Commission labels Sidenor as an "uncooperative exporter". It states:

> *In response to the Commissioner's invitation to complete an REQ, an exporter of the goods from Greece, Sidenor Steel Industry S.A (Sidenor), wrote to the Commission to advise that it would not be cooperating with the investigation through the provision of a REQ.*

Our client recognises that an exporter will be an "uncooperative exporter" in the terms of the definition in Section 269T of the *Customs Act 1901* ("the Act") if it does not give the Commission information considered to be relevant to the investigation within a reasonable period. However, lest the Commission and interested parties be left with a poor impression of Sidenor, based on the way in which SEF 418 describes Sidenor's position, we would like to remind all concerned of Sidenor's advice to the Commission at the commencement of the investigation.

Sidenor wrote to the Commission and gave reasons for its inability to respond to the detailed requirements of the Exporter Questionnaire ("EQ"), namely that its exports to Australia were of very low volume, that the legal and administrative resources required could not be supported in that context, and that Sidenor did not have the personnel available in the "high summer" period in which the EQ response had been requested. Indeed, that was the extent of Sidenor's non-participation in the investigation – it did not provide the information requested by the Commission. It did not do this in a defiant way, or in a way that was critical of the Commission.

A failure by an exporter to cooperate is not an offence. It does not give an investigating authority the *carte blanche* to "penalise" that exporter. In the same way that participation in an investigation is not a reason to treat an exporter "favourably", a failure to participate is not a reason to treat an exporter "unfavourably". "Favour" or "disfavour" do not come into an investigating authority's consideration. The Commission must establish the facts in a proper way, evaluate those facts in an unbiased and objective manner, and make its findings according to law.

In this context, our client was concerned to find that the dumping margin reported in SEF 418 for *"Sidenor and all other exporters from Greece"* was 42.1%. In SEF 418, this was said to have been based on a comparison of:

- a normal value based on the information provided in the application from OneSteel, which the Commission considered to be *"the most reliable available to it"*; and
- an export price based on the weighted average export price of exports from Greece, as reported in the Australian Border Force database.

We make the following observations about this.

First, in the Consideration Report ("CON 418") published at the commencement of the investigation, the Commission used exactly the same logic in working out the dumping margins for exports from Greece in order to be satisfied that there appeared to be "reasonable grounds" for the initiation of the investigation. In CON 418, the Commission formed the view:

- that "the applicant's normal value estimates are reasonable"; and

- that the *"weighted average FOB price"* for each country from the *"DIBP import database"* should be used for the purpose of establishing export prices.

On this basis – which is exactly the same basis said to have been used to work out the dumping margin for Greece in SEF 341 – the dumping margin worked out was 27.3%.

It is not at all clear to our client or ourselves how it is that two calculations using the same data can diverge by so much. The only difference between the two calculations appears to be the time at which they were made. The first calculation was undertaken before it became known whether Sidenor would participate in the investigation by responding to the EQ. The second, which arrived at a dumping margin finding that was 54% higher than the first, was made after Sidenor had advised the Commission that it was unable to participate in that way, and accordingly became an "uncooperative exporter" in terms of the Act.

Our client objects to the determination of its dumping margin at 42.1%, or for that matter at 27.3%. With respect to the determination of normal value, Section 269TAC(6) of the Act provides as follows:

> *Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.*

Sidenor accepts, as it must, that its normal value had to be worked out in SEF 418 in the way prescribed by Section 269TAC(6). The wording *"having regard to all relevant information"* in the Section is unusual, but ultimately there can only be one kind of relevant information, namely the most relevant information.

A comparison of OneSteel's margin calculations with those verified by the Commission presents as follows:

Source of exports	**OneSteel estimate**	**Commission finding**	
		Verified	**Uncooperative**
Greece	21.5%	NA	42.1%
Indonesia	29.2%	-2.2% / 0.4%	7.2%
Spain	16.9%	7.5%	NA
Taiwan	8.2%	4.4%	NA
Thailand	6.2%	9.6%	12.2%

The Commission finding with respect to Greece is an outlier of epic proportions. Our client can see no justification for the number that the Commission has reported as being Sidenor's dumping margin, strongly objects to it, and asks for it to be properly reconsidered.

We also wish to query the approach towards non-injurious price that is promoted by SEF 418, which states as follows:

> *The Commissioner is of the view that in a market unaffected by dumping, it is reasonable to expect that OneSteel would continue to set its prices with regard to benchmarked import prices. In this case, as the price of imports would be higher at least by the dumping margins found, it would be expected that OneSteel's prices would also be higher by at least the percentage of the dumping margins found. The Commissioner notes that this approach is consistent with the approach taken in Investigations 264 and 300.*
>
> *Accordingly, the Commission considers that the NIP for each exporter is a price equal to the respective normal value. This redresses the effects of dumping without redressing the effects of any other factors influencing price.*

The lesser duty rule, as it is known, is regulated under the Act by a combination of Section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, and Section 269TACA of the Act itself.

The former provides that if a notice is to be published against certain exporters at the conclusion of an investigation, the amount of the export price ascertained for the exporter and the interim dumping duty must not be greater than the non-injurious price. The latter provides that the non-injurious price of goods is *"the minimum price necessary… to prevent the injury, or a recurrence of the injury"* to the Australian industry concerned.

Given these provisions, we respectfully submit that the Commission is required to establish a non-injurious price for rebar coil at a level that is at the level of the export price observed during the investigation with respect to the *"exporter not subject to this investigation"*, which is likely to be the Korean exporter to which we have referred previously, or at the level of the normal value of exports from Spain. A non-injurious price higher than that would be at a level more than the minimum price necessary to prevent the injury concerned, or its occurrence, and therefore would offend against the statutory provisions concerned.

We reiterate that the above comments are reflective of our client's concern that the matters to which they relate not stand uncorrected, and for the purposes of completeness. They do not detract from our client's primary position, which is that the rebar coils subject to this investigation have not caused material injury to the Australian industry.

Yours sincerely

Daniel Moulis
Partner Director