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6 December 2017

Ms S D'souza
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Operations 2
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Australian Capital Territory 2600

By email

Dear Sangeeta

Neumann Steel Pty Ltd
Comments regarding Statement of Essential Facts

As you know, we represent Neumann Steel Pty Ltd ("Neumann Steel") in this matter.

Neumann Steel was disappointed upon reading the Statement of Essential Facts ("SEF") and particularly with regard to the decision to make a preliminary affirmative determination ("PAD").

The law is clear with regard to the requirements of an injury analysis. Any consideration of whether dumping has caused material injury must be *based on facts and not merely on allegations, conjecture or remote possibilities.*[1] Of course, the exercise that this refers to is a determination of whether any dumping that is found to have occurred caused material injury to the Australian industry producing like goods for the purposes of Section 269TG(2).

Upon review of the SEF, Neumann Steel considers that facts before the Anti-Dumping Commission ("the Commission") lead naturally to an alternate recommendation than that proposed in the SEF. Material injury has not been suffered as a result of imports of rebar coil from the subject countries. In particular, Neumann Steel will address the following points:

- Neumann Steel's imports were not injurious;
- OneSteel has not suffered volume injury;
- OneSteel has not suffered price injury; and
- The non-injurious price for imports from Greece is incorrect.

[1] Section 269TAE(2AA) *Customs Act 1901* ("the Act").

A Neumann Steel's imports were not injurious to OneSteel

As Neumann Steel explained in its original submission of 3 November 2017, its imports from Spain and Greece have not caused OneSteel injury. Neumann Steel now wishes to quantify the volume of its [CONFIDENTIAL TEXT DELETED – product] imports from Greece for the Commission. The volumes that Neumann Steel imported from Greece were as follows:

[CONFIDENTIAL INFORMATION DELETED – import volumes over POI]

[CONFIDENTIAL TEXT DELETED – number] of these imports were of [CONFIDENTIAL TEXT DELETED – product] – a product that OneSteel cannot produce, and itself has to import. Nowhere in the SEF is OneSteel's incapability mentioned. Imports of these goods cannot, as a matter of fact, injure OneSteel, as OneSteel does not produce [CONFIDENTIAL TEXT DELETED – product], nor does it produce substitutable goods. This is a fact of significant relevance to the question of whether those imports of the subject goods have caused OneSteel injury.

Imports of [CONFIDENTIAL TEXT DELETED – product] were a significant portion of Neumann Steel's import volume. We submit that it is entirely incorrect to find that such imports were injurious to OneSteel. When this fact is taken into account, Neumann Steel considers that the only possible conclusion will be that imports from Greece have not caused material injury to OneSteel and that the investigation should be terminated insofar as it relates to those imports under Section 269TDA(13) of the Act at the soonest possible convenience

B OneSteel has not suffered volume injury

The SEF correctly finds that OneSteel did not suffer from a loss of sales volume, having increased its sales by 18% between 2015 and 2016.[2] Nonetheless, the SEF does consider that OneSteel has suffered material injury in the form of loss of market share, which is quantified as a 4% decrease in the period of investigation ("POI").[3]

This is an odd outcome. In the context of a significant increase in sales volume, a slight decrease in market share cannot factually be considered to be injurious.[4] Market share has no value in and of itself. No doubt OneSteel is significantly happier with the marked increase in sales volume than it would be if it had only maintained its market share. Moreover, it is clear that over the expanse of the injury analysis period, OneSteel has actually increased its market share significantly, whereas the market share of all imports has decreased.[5]

Neumann Steel does not believe that OneSteel's 4% decrease in market share is injurious – materially or otherwise. This notwithstanding, Neumann considers that this finding is based upon the assumption that OneSteel's market share should have, at a very minimum, remained the same as it was in the 12 months prior to the POI. However this assumption is not reasonable, particularly so in circumstances where:

- OneSteel was already operating at close to full capacity during the POI and had difficulties supplying its existing customers.[6] These issues are still ongoing.[7] Under these

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2 SEF, page 46.
3 SEF, page 48.
4 We note that page 65 of the SEF refers to OneSteel "*maintaining sales volume*". This misstates the material facts. OneSteel increased its sales volume by at least 21% between 2015 and 2016. It is important in making recommendations to the Assistant Minister, and in communicating the material findings of fact and the particulars of the evidence supporting those findings of fact, that accurate objective language is used.
5 Figure 4, page 47 SEF.
6 As discussed with the Commission during the verification and as established via the submission of emails substantiating supply issues.
7 See File Note of Meeting between Nervacero S.A. and SANWA and the Commission.

circumstances, it is not clear what OneSteel could have hoped to achieve in terms of further market share.

- OneSteel does not offer to supply every customer in the Australian market.[8] The SEF appears to consider this to be irrelevant to the question of injury based upon the belief that there is "price sensitivity" in the rebar market.[9] The rationale behind this is not apparent. If OneSteel will not sell rebar to an entity then OneSteel's price – or indeed the price of imported rebar - is entirely irrelevant to whether that entity will purchase from OneSteel. By limiting who it sells to, OneSteel ultimately limits how rapidly its market share may increase.

- On an added note, what are the particulars of evidence supporting the material finding of fact that there is a "high level of price sensitivity in the rebar market"? Has some form of econometric analysis been undertaken to determine the price elasticity of supply in that market? If not it would seem that this finding is based on mere conjecture, unsupported by fact. To counter this finding we note that, despite being the most expensive source of rebar in the Australian market OneSteel still manages to supply 78% of the Australian market and managed to increase its sale volume significantly over the investigation period.

- [CONFIDENTIAL TEXT DELETED – discussion of conditions of sale].

- OneSteel has imported rebar during the POI, and this has not been considered, at all, in looking at injury.[10] If OneSteel is selling rebar from other sources, this suggests that OneSteel could not meet the demand in the market – and therefore could not be expected to increase market share. It also suggests that OneSteel's market share, as ascertained by the SEF, is not a proper consideration of OneSteel's performance, as although these sales were of imported goods, they were still OneSteel's sales.

- Finally, as admitted by OneSteel in its application, it is unable to produce larger coil (anything equal to or above 20mm).[11] A significant portion of imports from the countries subject to this investigation were [CONFIDENTIAL TEXT DELETED – product]. As Neumann pointed out in its submission of 3 November 2017, [CONFIDENTIAL TEXT DELETED – number] of the rebar it imported was product that OneSteel cannot produce. OneSteel cannot be injured by virtue of a product it has not ability to produce or compete against. Without having considered this, the SEF's findings regarding injury are conjecture at best.

Neumann Steel reiterates that it [CONFIDENTIAL TEXT DELETED – details of sources of rebar during POI]. Moreover, it is clear that OneSteel was able to significantly increase its sales volume during the POI. Any finding in these circumstances that OneSteel has suffered actual injury as a result of it having smaller market share is not a finding that is factually based, and is therefore not a finding that meets the standard of Section 269TAE(2AA) of the Act.

C OneSteel has not suffered price injury

In determining that "price suppression" has occurred, the SEF has compared OneSteel's price to its cost to make and sell ("CTMS") on a quarterly basis across the injury analysis period. If we understand the logic correctly, the point of this exercise is to identify instances where the price should have risen in response to an increase in the CTMS. If there is no corresponding increase in price, then price suppression will be found to have occurred. As the SEF concludes "*OneSteel is a profit seeking entity that in the ordinary course would strive to remain profitable*".[12]

8 SEF, page 69.
9 *Ibid.*
10 SEF, page 45.
11 Application, page 15.
12 SEF, page 50.

Neumann Steel does not consider that this logic adequately reflects the facts. As Neumann Steel discussed in its initial submission, and as the SEF delves into, prices between OneSteel and its unrelated customers are negotiated in advance and on the basis of import price intelligence.[13] The price OneSteel offers its customers is essentially import parity plus a premium ("IPP+P").[14] Again, there are three things of note here.

Firstly, OneSteel's prices are set in advance, generally [CONFIDENTIAL TEXT DELETED – period] to the actual sale. They cannot respond to increases in costs that occur after the prices are set. Therefore the value of the price suppression analysis is limited as the ability of prices to respond to increase in costs are restrained. For example, OneSteel attributed its rising CTMS during the POI to increases in coke costs and "weather events".[15] If prices are set prior to the events which impact costs, then OneSteel cannot react to these differences. This the reason why OneSteel did not increase its prices in response to the increases in the CTMS – it is not evidence of "price suppression".

Secondly, while it is reasonable to assume that OneSteel is a profit seeking entity, that assumption comes with a significant factual caveat. OneSteel operates in the context of a larger corporate group which fully owns OneSteel. Decisions regarding profitability will be made at the Group level, not at OneSteel's level. So decisions may be made in favour of the group at the cost of OneSteel. OneSteel's pricing mechanism to unrelated entities is an example of such a "group-focussed" decision. This methodology is targeted at minimising fixed costs, by maximising output.[16]

While this may appear strange at first, this can be dispelled if one considers the true nature of OneSteel's sales of rebar. OneSteel *Manufacturing* is not an independent entity. Its operations cannot be considered in isolation from the rest of its corporate group. "OneSteel" is a group which has vertical control over its production and sale of fabricated rebar products. OneSteel's prices to its related entities actually "intercompany" transfers.[17] On a consolidated basis the profit or loss made on these transfer would have been eliminated in full from the consolidated balance sheet.[18] As a result, these transfers would likely be recorded at cost – thus the lower cost is of significant importance at the consolidated level. Therefore, maintaining lower costs is more important at the group level than is achieving a profit on its sales to unrelated entities.

Neumann Steel notes that the SEF considers these intercompany sales are "arm's length sales".[19] The significance of this is unclear. It is not apparent that the SEF has applied the test specified for determining whether sales are arm's length under Section 269TAA of the Act. Without having applied this test, it is unclear what the arm's length finding means or why it is relevant to this investigation. Ultimately, OneSteel's related entities do not purchase rebar from other entities in the general course of business, so there is no true competition between these sales and the imports targeted by this investigation. A finding that these "sales" have been at injurious prices in these circumstances by virtue of an artificial link with import offers is not a finding that is supported by fact.

Putting that issue to one side for a moment, we make the observation that to the extent that maintaining or increasing its production volumes is OneSteel's primary goal, it has been very

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13 SEF, page 57.

14 Indeed, the methodology has been referred to as such in previous instances. It is unclear why that is no longer the case.

15 SEF, page 49.

16 As an aside, basic economics is that there is an inverse relationship between quantity of supply and price.

17 *Investigation 418 – Alleged Dumping of Steel Reinforcing Bar Exported from Greece, The Republic of Indonesia, Spain (Nervacero S.A), Taiwan (Power Steel Co. Ltd) and the Kingdom of Thailand – Visit Report – Australian Industry Liberty OneSteel* ("Visit Report"), page 10.

18 This is a common accounting practice, which was historically adopted by the Arrium Group. For example page 68 of the Arrium 2013 Annual Report, which details the notes to the Group's Financial Statement's explains: *All inter-company balances and transactions, including unrealised profits arising from intra-group transactions, have been eliminated in full.*

19 SEF, page 44.

successful, having increased sales by 21% between 2015 and 2016. Accordingly, Neumann Steel submits that OneSteel has not suffered injury in the form or price injury. OneSteel has achieved its purpose. It is wrong and factually inaccurate to find that injury has been suffered in these circumstances.

Thirdly, and as Neumann Steel noted in its submission of 3 November 2017, OneSteel was able to increase prices over the POI. This refutes the suggestion that prices were suppressed or depressed.

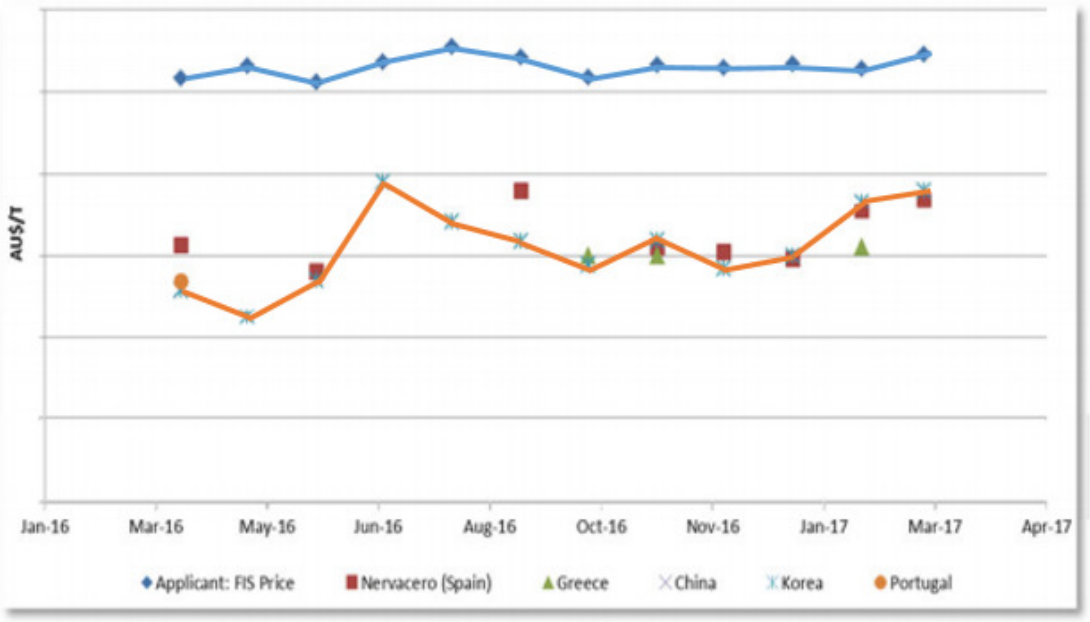
Accordingly, Neumann Steel does not believe that OneSteel has suffered price injury to any material degree. This above notwithstanding, Neumann Steel does not consider its imports from Greece have caused any of the injury the SEF has attributed to it. In particular, Neumann disagrees with the following finding in the SEF:

> *As discussed at section 8.5.1 of this report, market based pricing forms the basis for Australian industry's pricing strategy. Given the explanation provided by OneSteel regarding its market based pricing, the Commissioner considers that is not unexpected to find that the price of imports undercut OneSteel's prices during the investigation period.*
>
> *The Commission's price undercutting analysis however clearly indicates a correlation between OneSteel's price and the prices of dumped goods. The Commissioner also notes that the margin by which OneSteel's prices were undercut during the investigation period by subject countries that have been found to be dumping is not insignificant.*[20]

Neumann Steel agrees with the SEF's general proposition that a finding of price undercutting is merely a result of OneSteel's IPP+P methodology. Indeed, without the "+P" there would be no undercutting. Indeed, the fact that OneSteel is always able to achieve the +P while significantly increasing its sales volume belies the conclusion that there is price suppression.

According to the SEF, OneSteel uses "FIS" import offers as the basis for its pricing decisions. Neumann Steel notes that with regard to Greek rebar,[21] OneSteel only appears to have had three such offers over the POI.[22] This can be contrasted with imports from Korea where there appear to have been numerous instances of offers throughout the POI.[23] There is an obvious and direct relationship between these Korean price offers and OneSteel's prices:

20 SEF, page 60.
21 **[CONFIDENTIAL TEXT DELETED – details of imports]**.
22 Application, page 66.
23 *Ibid.*



We note that the report has discounted the impact of such imports on the basis *that they cannot be considered to be causative in relation to injury due to the dumped goods.*[24] The meaning of this is unclear, however what is clear is that the SEF has failed to consider the impact of these imports and has failed to undertake the required non-attribution exercise under Section 269TEA(2A)(a). This requirement must be undertaken for the purposes of the Report because:

- on the facts stated in OneSteel's Application, at Figures A-9.6.3(b) and A-9.6.4(b), Korean exports were consistently the lower priced, except for one month, and price offers from Neumann's export source, Greece, were by far the least frequent offers in the market place;
- on the facts stated in the SEF, the Korean exporter:
  - undercut OneSteel in 10 months of the POI;
  - at a level of undercutting in the range of 3% to 17%, which was higher than the ranges of undercutting by each of Greece and Spain; and
  - with a recurrence rate of offers into the Australian market which exceeded those of both of the other sources of rebar coil put together; and
- on the facts of the anti-circumvention application lodged by OneSteel in that separate proceedings, the prices of Korean exports in the market place were a strong fixation and clearly a grave source of concern for OneSteel in the POI.

The "correlation" between OneSteel's prices and dumped goods spoken of in the SEF is more strongly a correlation between OneSteel's prices and those from Korea. That fact, and the other evidence before the Commission, indicates that it is the "other exporter" exports that were the drivers of OneSteel's price behaviour, and that therefore caused any injury complained of by OneSteel. Had Neumann Steel not imported its goods from Greece, OneSteel would have suffered the same "injury" it complains of in this investigation.

[24] SEF, page 57.

With regard to the "significance" of undercutting, the SEF states that "there was no undercutting by Greece for 8 out of 12 months of the investigation", and that the level of undercutting reported was much less than that of the "other exporter".[25] Indeed, Neumann Steel would query whether the level of undercutting referred to by the Commission might have been even less than reported. Neumann Steel requests more information regarding how the FIS price of Greek rebar was used to determine whether undercutting had occurred. Neumann has not purchased any steel from Greece on an FIS basis, nor were any price offers made by Sidenor on an FIS basis. Neumann Steel is therefore led to understand that the FIS price has been constructed in some manner. Has this been done accurately? For example, if import duty – a cost that is borne by Neumann Steel when importing the goods – has been excluded, then the FIS price will be understated by 5%.

In summary, Neumann Steel does not consider that there are sufficient facts to establish that OneSteel suffered material injury in the form of price suppression by reason of the exports of rebar coil which are the subject of this investigation during the POI. We say this in light of the vertical nature of OneSteel's fabrication business and its "group" structure, and because any price suppression that OneSteel might complain of at the rebar coil level was plainly driven by the prices of exports from Korea. OneSteel would have been in no different position had there not been exports of rebar coil from Greece and Spain. Injury caused by imported goods that are not under investigation must not be attributed to the goods that are under investigation.

D Non-injurious price for imports from Greece is not correct

Notwithstanding Neumann Steel's primary position, which is that its imports of rebar coil could not have caused injury to OneSteel, Neumann also wants to address critical deficiencies in the proposed non-injurious price ("NIP"). Neumann Steel notes that the SEF proposes setting the NIP to the level of the normal value found for each exporter.[26] This significantly disadvantages Neumann Steel as an importer of Greek rebar, as the finding made in the SEF is that the NV was 42% higher than the respective export price.[27]

Neumann Steel does not believe this accords with the legal definition of an NIP. In particular, the Act notes that the NIP is the *"the minimum price necessary… to prevent the injury, or a recurrence of the injury"* to the Australian industry.[28] Neumann Steel considers the current NIP does not meet the requirement for the following reasons:

- As a matter of statutory interpretation, there can only be one "minimum price necessary" to prevent injury. While setting NIPs to individual normal values may be administratively expedient it results in a finding that there a numerous minimum prices necessary to prevent a recurrence of injury. As a result, this risks overprotecting the Australian industry by ensuring that dumping measures exceed those that are necessary to prevent the injury found by the Assistant Minister from continuing.

- Neumann Steel notes that there were imports from a country not subject to this investigation, that more significantly undercut OneSteel's prices, yet these imports have been found not to have caused OneSteel injury.

On balance, Neumann Steel believes the correct approach to determining a NIP would be to set it at the export price applicable to those imports.

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25 SEF, page 60.

26 SEF, page 73.

27 Neumann Steel does not understand how this has been increased from the margin included in the Consideration Report, as both that margin and the one calculated for the purposes of the SEF appear to be based on exactly the same information. Neumann Steel would appreciate disclosure regarding the reasons for the differences in the two margins.

28 Section 269TACA of the Act.

Ultimately, however, the question of a NIP should not be reached, because this investigation should be terminated on the basis of negligible injury.

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In summary, Neumann Steel submits that:

- given that the country export sources of the rebar coil imports under investigation exclusively exported rebar coil to Australia in the POI, those exports are not to be cumulated with other exports when considering their effects;
- none of Neumann Steel's imports of rebar coil, indeed none of the imports of rebar coil under investigation, caused material injury to OneSteel; and
- resultantly, there is no basis to impose anti-dumping measures in relation to Neumann Steel's imports from Spain and Greece.

Neumann Steel respectfully requests that this investigation should be terminated as against those exporters at the earliest possible opportunity in accordance with Section 269TDA(13) of the Act.

Yours sincerely

Alistair Bridges
Senior Associate