FOR PUBLIC FILE

19 December 2017

The Director
Operations 2
Anti-Dumping Commission

EMAIL investigations2@adcommission.gov.au

Dear Director,

Dumping Investigation No. 418* concerning *steel reinforcing bar (rebar) exported from Greece, Indonesia, Spain (Nervacero S.A), Taiwan (Power Steel Co. Ltd) and Thailand: Australian industry response to the submission of Nervacero S.A

Liberty OneSteel provides the following response in relation to the claims made by Spanish exporter Nervacero S.A. (**Nervacero**) that the *"SEF's determination of the date of sale of Nervacero's Australian sales and domestic sales is incorrect, and has ultimately affected the correctness of the dumping margin calculation."*[1]

Liberty OneSteel supports the Commission's decision not to deviate from its operating policy to use invoice date as date of sale rather than the export pro-forma invoice date and to not apply an adjustment as proposed by Nervacero. In addition to the reasons provided in SEF 418, the Australian industry also provides the following evidence supporting the Commission's decision as the correct or preferable decision:

1. **Material terms of sale do change between initial proforma invoice and invoice issued at time of export**

Nervacero have claimed:

> *"the issuance of the proforma invoice for export sales, and the issuance of an order confirmation for domestic sales, represented the point in time by which and at which all material terms of the* sales *contract are established....The* ***material terms of the sales to which those documents relate are not changed after the documents are issued.***"[2] [**emphasis** added]

Liberty OneSteel submits evidence which demonstrates instances where both a **volume** change and a **delivery port** change occurred after an initial pro-forma invoice was issued:

> *"This arises because there can be circumstances where an exporter and importer agree on price and quantity and make a sales agreement to that effect, but this may not establish the date on which terms were finally agreed upon* ***because an element of informality continues, and conditions can be changed.***"[3]

There is clear evidence, as detailed below, supporting the view that the conditions set out in the *Dumping and Subsidy Manual* have not resulted in a finalised transactions as fundamental contract terms continue to be subject to negotiation between the exporter (Nervacero) and the importer/purchaser.

[1] EPR 418/ Folio 051 Pg 4
[2] EPR 418/ Folio 051 pg 2
[3] Anti-Dumping Manual p62

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CONFIDENTIAL ATTACHMENT A shows the e-mail exchange between [redacted] and Nervacero where the following is requested:

[redacted]

AND

[redacted]

CONFIDENTIAL ATTACHMENT B and CONFIDENTIAL ATTACHMENT C show the original pro-forma invoice number [redacted] dated [redacted] and the subsequent revised proforma invoice number with the same number [redacted] issued by Nervacero and dated [redacted] reflecting the [redacted] increase in volume requested by the customer [redacted].

CONFIDENTIAL ATTACHMENT D shows the pro-forma invoice number [redacted] dated [redacted] issued in response to the request for additional volume and the correction made by [redacted] to ensure delivery to the correct discharge port.

Based on the evidence presented, Nervacero cannot reasonably support their denial to the Commission that material terms can (and do) change after issue of the pro-forma invoice for export sales.

In addition to the above example relating to Nervacero, it is not uncommon when international steel prices are volatile for offers to be reneged even if there are contracts in place:

> *"..... mills were the main culprits "this time," he said, suggesting it was "useless" to have a contract."*[4]

2. The actual weight exported can vary substantially from that on the pro-forma invoice

As observed on page 2 of the pro-forma invoices provided as CONFIDENTIAL ATTACHMENTS B, C and D, the tolerance specified for the export sales of reinforcing bar in coils by Nervacero to Australia is [redacted] on the mass ordered. By way of example, if a customer orders 1000 t, they may actually receive [redacted] and still be within the [redacted] permitted by the terms of the pro-forma invoice. This represents a significant variance in relation to what the customer may actually receive at time of export and again reinforces the need for the invoice date to set the date of sale, being the date on which the actual rebar coil mass for shipment is known and settled.

3. The claimed adjustment is an opportunistic attempt by the exporter to reduce its dumping margin

In *Dumping Investigation No. 264*, the exporter visit report for Nervacero and Compañía Española De Laminación, S.L. reported:

> *"Both companies recorded the date of sale as the date of the sales invoice."*[5]

[4] Subscription article – Confidential attachment E

However, in Nervacero's latest submission, the following statement is made:

> *"Nervacero accepts that it did not put forward its view regarding the date of its sales, and that it simply followed the Commission's "default" position in Investigation 264. However,* ***nothing turned on that distinction at the time, because on the basis of the company's calculations it was not engaged in dumping no matter which date of sale was used for comparison purposes.***"[6] [emphasis added]

This is an admission by the exporter (Nervacero) that for each investigation (264 and 418) they opportunistically nominate a date of sale narrative best designed to avoid or minimise their dumping margin calculation, even where such a narrative is contradictory or fabricated. It is also an admission that for this *Dumping Investigation No. 418* "on the basis of the company's calculations" it was engaged in dumping (7.5% preliminarily determined by the Commission's own calculations) and is thus urging the Commission to use a different date of sale in an attempt to secure a reduced dumping margin.

Undeterred by the facts, the importer SANWA, advances a novel argument aimed at suggesting that its exporter (Nervacero) was the victim of timing and that the dumping margin calculation must be only 'technical'. The Australian industry urges the Commission not to be distracted by this representation as it attempts to ignore the commercial reality of the relationship between raw material costs and pricing decisions for export and domestic sales:

> *"If in this intervening period* [between the date of shipment and date of contract] *the domestic market moves downward then no problem but if the price of scrap rises and a producer's (Novacero) European competitors push prices upwards then what is a Novacero supposed to do. Sorry sharedholders we cannot increase our prices domestically because the business concluded last month and invoice this month will end up being lower than our current domestic sales and will fall foul of the Australian Anti Dumping regulations ??"*[7] [sic]

The commercial reality and facts are that when an exporter such as Nervacero makes a pricing decision for either domestic or export sales, it does so knowing what its forward medium term raw material costs will be when the steelmaking and rolling that converts these raw materials into finished goods occurs. For example:

- Export orders taken in mid-October 2017 will typically be produced in a November 2017 production rolling and will likely be invoiced and shipped in December 2017, based on raw material costs in November 2017.
- Domestic product invoiced in December 2017 will be based on the costs for product which were predominantly manufactured as part of a November 2017 production rolling, based on raw material costs in November 2017.

As such, the exporter's pricing decisions for December invoices are based on essentially the same costs (i.e. November 2017 raw material costs) which aligns in the exporter's costing system as noted by the Commission in SEF 418:

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[5] EPR Folio No. 264/071 pg 21
[6] EPR Folio No. 418/051 pg 4
[7] EPR Folio No. 418/045 at pg 3

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- *"transactions are recognised as sales in the accounting system on invoice date;*
- *in its CTMS data Nervacero allocated quarterly SG&A costs using sales volumes determined based on invoice date;"*[8]

For this reason it is not appropriate to change the date of sale to the contract date as this would misalign the costs of production for both domestic and export sales. Liberty OneSteel urges the Commission to remain vigilant and resist these attempts at manipulation of the anti-dumping system by this exporter. As previously explained by the Commission in SEF 418:

> *"the Manual requires any claim for a date of sale other than invoice date to address whether the materials cost differs between the time of the pro forma invoice/order confirmation and the invoice, and whether contracts were entered into for material purchases, which Nervacero hasn't addressed, and in relation to which the Commission found* ***no evidence that Nervacero's pricing considerations support its claim.***"[9]

The Dumping and Subsidy Manual (the Manual) further states:

> *"Using the contract date for export sale is* ***most likely to have application*** *in situations where the production process takes a long time—for example, manufacturing items of heavy capital equipment causing delivery to occur well after the sale has taken place."*[10]

The production of a commodity product, ie. reinforcing bar, for either domestic or export sale is clearly not the type of scenario described where the use of contract date for export sale is considered most likely to have appropriate application.

4. <u>The US authority has recently rejected similar claims for adjustment to date of sale by CELSA entities</u>

In the recent US Anti-dumping investigation of Carbon and Alloy Steel Wire Rod from Spain[11], having the period of investigation defined as January to December 2016, the CELSA affiliated entities similarly argued:

> *"the Order Confirmation Date is the Date of Sale for all Home-Market and US Sales" AND*
> *"CELSA believes and has demonstrated that the material terms of sale are fixed on (and do not change after) the date of the order confirmation"*[12]

Not unlike the Commission's preliminary determination in SEF 418, the International Trade Administration of the US Department of Commerce did not find that the evidence presented by the CELSA entities supported a departure from the established practise under Section 351.401(i) of the Department's regulations of applying the invoice date as the date of sale.

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[8] SEF 418 at pg 33
[9] SEF 418 at pg 33-34
[10] Dumping and Subsidy Manual at pg 63
[11] Case No. A-469-816
[12] Non-Confidential attachment F - pg 1

"After examining the record, the Department has determined that ***there is insufficient evidence demonstrating that a date other than invoice date better reflects that date on which the material terms of sale were established****. Given that the price and quantity were not finalized until issuance of the first invoice, we find that the material terms of sale are established on the date of first invoice."*[13] [emphasis added]

5. The updated sales listing provided by Nervacero has not been verified

Liberty OneSteel asserts that even if the Commission were to deviate from its long standing policy of using the invoice date as the date of sale that the information provided by Nervacero could not be treated as reliable.

The Exporter visit report for Nervacero states:
"During the visit Nervacero provided an updated domestic sales listing, with the following corrections to the version provided in its REQ:

- *Inclusion of financial expenses applicable to each sale for the purposes of an adjustment claim – discussed further at 6.7; and*
- *Inclusion of an additional quarter of sales (the quarter prior to the commencement of the investigation period) for the purposes of comparing domestic and export sales with an order confirmation date prior to the investigation period."*

AND
"Nervacero provided this updated domestic sales listing ***after the original sales listing had been verified upwards to audited accounts, however, as the verification team does not consider order confirmation date to be the date of sale****, the additional quarter of sales included in the updated listing were not relevant to the determination of normal value and* ***therefore did not require verification****."*[14] [**emphasis** added]

Given the Commission's reliance on ADN 2016/030 *(Verification Procedures and Reporting)*, it cannot be said that this subsequently provided evidence satisfies any of the conditions of the verification methodology. If this post-verification information is relied upon then it entrenches the practice of exporters 'gaming' the verification process 'down to the wire' or at least until they 'chisel' away at the Commission's dumping margin calculation sufficiently.

In light of the information presented in this submission, Liberty OneSteel strongly supports that the Commission's preliminary decision to not apply a date other than the invoice date as the date of sale for Nervacero remains unchanged.

FOR AND ON BEHALF OF THE AUSTRALIAN INDUSTRY APPLICANT

ONESTEEL MANUFACTURING PTY LTD (trading as 'LIBERTY ONESTEEL')

[13] Non-confidential attachment G at pg 20
[14] EPR 418/ Folio 039 Pg 11

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