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15 July 2015

Ms Candy Caballero
Director Anti-Dumping Operations 3
Anti-Dumping Commission
55 Collins Street
MELBOURNE VIC 3000

Dear Ms Caballero,

Dumping Investigation No.264 – Submission of Best Bar Pty Ltd dated 3 June 2015

This submission is made in response to the Best Bar Pty Ltd ("Best Bar") submission dated 3 June 2015.

OneSteel strongly disputes the content of the Best Bar submission, from two main perspectives - firstly, its characterisation of the Australian reinforcing market and, secondly, the policy positions it seeks to promote.

The Australian reinforcing market

A number of assertions are made in relation to OneSteel's position and arrangements in the Australian reinforcing market. Suffice to say, OneSteel disagrees with most of them. However, some points in the Best Bar submission need to be specifically addressed for the Commission's information.

Best Bar's submission states that it is "one of only a handful of viable alternative suppliers of rebar-based commodities in the Australian downstream fabricated reinforcing steel market". While much turns, no doubt, on the meaning given here to the words "handful of viable", OneSteel can inform the Commission that over the last 12 months OneSteel has itself supplied [confidential - number] separate alternative/independent suppliers of rebar-based commodities in the Australian downstream fabricated reinforcing steel market (i.e. reinforcing cut and bend processors). All of these customers are "viable alternate suppliers" to the OneSteel-related reinforcing cut and bend processors, particularly given that these alternative/independent suppliers are all long term participants in the Australian downstream reinforcing market.

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Supply arrangements are intended to be mutually beneficial arrangements based on reciprocal commitments and OneSteel's rebar arrangements are no exception. Furthermore, steel supply arrangements like OneSteel's are used by most, if not all, steelmakers across the world, including NatSteel Singapore. OneSteel finds it curious that Best Bar does not disclose in its submission the relevant fact that, until 25 September 2014, it was a subsidiary of NatSteel Singapore (NatSteel Holdings Pte. Ltd[1]). NatSteel Singapore is itself a major rebar producer and exports large volumes of rebar to Australia. NatSteel Singapore is part of one of the world's largest steel groups - Tata Steel[2].

[Confidential - Description of the timing and nature of the trading relationship history between OneSteel and Best Bar]

OneSteel greatly values its independent customers, but if a customer wishes to adopt an alternative business value proposition then there are number readily available import alternatives. Indeed, OneSteel understands that Best Bar [Confidential – OneSteel's understanding of Best Bar's trading relationship with other suppliers.]

Overwhelmingly OneSteel enjoys long term, mutually beneficial relationships with its independent customers and, contrary to Best Bar's submission, competes vigorously for their business. The pricing information (average net domestic sales prices) contained in CONFIDENTIAL ATTACHMENT "A" demonstrates how OneSteel approaches pricing to its Australian reinforcing cut and bend processing customers. That pricing information clearly indicates, contrary to Best Bar's submission, that:

- OneSteel's pricing decisions are not driven by whether or not the downstream customer is a related or unrelated party; and
- import competition still affects the prices that OneSteel receives from its related downstream customers i.e. those sales are not "shielded" from import competition.

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[1] Refer *Tata Steel Annual Report 2013-2014*, http://www.tatasteel.com/investors/annual-report-2013-14/annual-report-2013-14.pdf, (accessed 9 July 2015), p.195, where it states that Natsteel Holdings Pte Ltd (either directly or through subsidiaries) owned 71% of Best Bar Pty Ltd.

[2] Refer *Tata Steel Annual Report 2013-2014*, http://www.tatasteel.com/investors/annual-report-2013-14/annual-report-2013-14.pdf, (accessed 9 July 2015), p.195.

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Best Bar has previously indicated to OneSteel that a significant reason why OneSteel did not become Best Bar's principal supplier of rebar after July 2012 was because [Confidential- supply arrangements] put in place by NatSteel Singapore in some way commercially precluded Best Bar from moving the contemplated volumes to OneSteel. Of course, OneSteel is not in a position to conclusively assist the Commission on the background to Best Bar's sourcing decisions, but OneSteel can certainly demonstrate - based on the data in CONFIDENTIAL ATTACHMENT "A" - that there is no validity in the repeated implication in Best Bar's submission to the effect that OneSteel was unfairly or not competitively pricing its products to Best Bar.

Best Bar's policy proposition

OneSteel notes Best Bar's reference to the WTO Appellate Body's decision in *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*[3] ("*US – Hot-Rolled Steel Products*"). However, OneSteel submits that the Appellate Body's decision has no relevance to the circumstances of *Dumping Investigation No. 264*.

In *US – Hot-Rolled Steel Products* the Appellate Body considered whether or not provisions within the US Tariff Act 1930[4] were consistent with Articles 3.1 and 3.4 of that *Anti-Dumping Agreement*,[5] specifically:

> "Section 771(7)(C)(iv) of the United States Tariff Act of 1930, as amended (the "captive production provision"), provides that, **in certain statutorily defined circumstances, the USITC "*shall focus primarily*" on a particular segment of the "domestic industry**", when "determining market share and the factors affecting financial performance ", as part of an injury determination."[6] (**emphasis added**)

According to the Appellate Body, the problem with the *United International Trade Commission's* ("USITC") approach under the United States Tariff Act of 1930, was:

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[3] Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan* ("*US – Hot-Rolled Steel Products*"), WT/DS184/AB/R, adopted 24 July 2001

[4] Specifically, section 771(7)(c)(iv) of the United States Tariff Act of 1930

[5] *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("*Anti-Dumping Agreement*")

[6] Appellate Body Report, *US – Hot-Rolled Steel Products*, para. 212.

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> "…we observe that the USITC Report contains data for, firstly, the merchant market and, secondly, for the overall market. Furthermore, the USITC's injury analysis also contains reference to data for the merchant market and for the overall market. **In particular, in its examination of market share and of each of the financial performance indicators, the USITC mentioned data pertaining to the merchant market and the overall market**. However, while the USITC Report includes frequent reference to data for the merchant market, it does not contain, describe, or otherwise refer to, data for the captive market. At the oral hearing, the United States confirmed that the USITC did not include in its Report "a separate discussion" of the captive market. According to the United States, **the examination of the data for the captive market is subsumed within the examination of the domestic market as a whole, even though the merchant market is the subject of separate and express examination**."[7] (**emphasis added**)

Therefore, the Appellate Body expressed its objection to the USITC's approach as follows:

> "As we have already explained, in the absence of a satisfactory explanation, Article 3.1 of the *Anti-Dumping Agreement* does not entitle investigating authorities to conduct a selective examination of one part of a domestic industry. **Rather, where one part of an industry is the subject of separate examination, the other parts should also be examined in like manner. Here, we find that the USITC examined the merchant market, without also examining the captive market in like or comparable manner, and that the USITC provided no adequate explanation for its failure to do so.**"[8] (**emphasis added**)

The US captive production provision has no parallel under Australian law, **nor is it** applied in practice by the Commission. In fact, in *Dumping Investigation No. 264*, the Commission went to great lengths to ensure that its analysis of market share and financial performance indicators, included both the so-called 'merchant' and 'captive' markets. In other words, as required by Australian law the Australian industry's economic conditions were examined, *as a whole*.

OneSteel dismisses the suggestion by Best Bar that sales of like goods to its related customers, i.e. sales into the so-called 'captive' market, are "effectively shielded from import competition", and therefore any injury suffered on those sales "cannot be attributed to dumping". This issue was

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[7] *Ibid.*, at para. 181.

[8] *Ibid.*, at para. 214.

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specifically explored by the Commission in its verification of the Australian industry claims in terms of causation, and in terms of factors other than dumping causing injury.[9] Similarly, the Commission examined the spurious allegation of "profit transfer" made by Best Bar against OneSteel. Again the Commission explored this issue and concluded that:

> "We do not consider that the difference in pricing between internal and external customers is a factor in the injury identified".[10]

To put this issue beyond doubt, OneSteel provides at CONFIDENTIAL ATTACHMENT "A", analysis of the average net domestic sales prices by OneSteel to its related and unrelated Australian reinforcing cut and bend processing customers for like goods across the investigation period in Dumping Investigation No.264. The analysis shows that related customers were not, as Best Bar's submission suggests, the beneficiaries of any below market prices. What can be observed is that OneSteel's pricing decisions are not driven by whether or not the downstream customer is a related or unrelated party, as Best Bar's submission seeks to suggest. The market price is affected by the impact of dumped imports, and OneSteel is unable to "shield" any of its sales from the price undercutting by importers of dumped goods.

In fact, it is disingenuous for Best Bar to seek to invoke the Appellate Body report in *US – Hot-Rolled Steel Products*, which clearly requires the Commission to consider injury to the industry *as a whole*, considering, and then seek to suggest that volume purchased by downstream customers, albeit related to OneSteel, does not constitute the Australian market volume for the goods under consideration and like goods. In fact, what is proposed by Best Bar would offend against Article 3.1 of the *Anti-Dumping Agreement*, in that it would preclude:

> "an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products."

Indeed, *section D* of Best Bar's submission suggests that the Commission should embark on the unjustified and unauthorised examination of the economic performance of non-producer industry parties, for example, OneSteel's related party customers who are downstream reinforcing cut and bend processors. This was expressly discouraged by the Disputes Settlement Panel in *European*

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[9] Australian Anti-Dumping Commission, *Dumping Investigation No. 264*, 'Visit Report – Australian Industry', section 8.3.3.

[10] *Ibid.*

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Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India ("*EC — Bed Linen")* in relation to information concerning Article 3.4 injury factors for companies outside the domestic industry. In that case, the Panel held that information about companies which are not part of the domestic industry "provides no basis for conclusions about the impact of dumped imports on the domestic industry":

> "In our view, information concerning companies that are not within the domestic industry is irrelevant to the evaluation of the 'relevant economic factors and indices having a bearing on the state of the industry' required under Article 3.4. This is true even though those companies may presently produce, or may have in the past produced, the like product …. Information concerning the Article 3.4 factors for companies outside the domestic industry provides no basis for conclusions about the impact of dumped imports on the domestic industry itself."[11]

As such, the Commission should dismiss the allegations contained in *section D* of the Best Bar submission as outside the scope of Dumping Investigation No. 264, to avoid the suggestion of having regard to irrelevant factors to the assessment of injury suffered by the Australian domestic industry, as defined by the *Customs Act 1901*.

Yours sincerely,

Matt Condon
Manager Trade Development

[11] Panel Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/R, adopted 30 October 2000, para. 6.182.

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CONFIDENTIAL ATTACHMENT "A"