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12 November 2018

The Director
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Anti-Dumping Commission
55 Collins Street
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By email

Dear Director

Nervacero S.A
Responses to Preliminary Reinvestigation Report 418

As you know we act for Nervacero S.A ("Nervacero") in this Anti-Dumping Review Panel ("ADRP") review.

We refer to the abovementioned preliminary reinvestigation report ("the PRR"), published on 29 October 2018. We welcome the opportunity to provide submissions concerning the preliminary findings.

We provide our comments in relation to each of the reinvestigation subjects that the PRR attempts to deal with, in the context of the ADRP's reinvestigation request, in turn.

1 Non-compliance with volume effects request

The ADRP's reinvestigation request dated 26 June 2018 ("the reinvestigation request") asks the ADC to reinvestigate "volume effects" as follows:

> *ADC should reconsider its analysis, reasoning and conclusion in respect of its finding in respect of "volume effects", which in REP 418 focused on the increase in dumped imports relative to domestic consumption, that is, market share of the dumped imports.* [footnote omitted]

In our view, the volume effect analysis at 4.4.1 of the PRR continues to be limited to the market share increase of dumped imports, and the market share decrease of the Australian industry, during the investigation period. This is a single year out of the four year injury analysis period.

In its reinvestigation of this matter the PRR proposes that the ADRP affirm:

> *…[the] finding that Australian industry suffered material injury due to volume effects from dumped imports as shown in reduced market share during the injury analysis period (ie from 1 April 2013)"* [underlining supplied]

This does not appear to be an appropriate conclusion in light of the demonstrated facts. The PRR is silent as to the following matters, each of which relate to the question of volume effects.

(a) **Sharp increase of 18% in OneSteel's sales volumes** - as pointed out in Nervacero's review application:

> *OneSteel's total sales volume of its self-produced product during the period of investigation ("the POI") accounted for about 96% of the entire Australian market in the previous 12 months (April 2015 to March 2016). With OneSteel's sales of the goods it imported from, inter alia, Nervacero, OneSteel's sales volume exceeded the entire Australian market volume during that previous 12 months. Further, the Australian market was considered by the Commission not to have been affected by dumping during the period from July 2015 to March 2016.*

(b) **Increase in market share of "other imports"** – the "other imports" market share also increased, from a minimal level to over 4%, which is not immaterial in comparison to the market share of the dumped imports, at 13%.

(c) **Increases in the injury analysis period exceed the decrease in the investigation period** – there was a reduction in the Australian industry's market share between 2015 and 2016, from 82% to 77%. There was also an increase in the Australian industry's market share between 2013 to 2016, from 70% to 77%. There was an even larger increase in the Australian industry's market share between 2014 and 2016, from 61% to 77%. Further, a comparison between the four year average of the injury analysis period and the 2016 year shows an increase from 72% to 77%

The PRR asserts that *"loss of market share caused material injury to the Australian industry"*, without any explanation. The PRR cites subsection 269TAE(1)(c) of the Act in support of its affirmed conclusions. However the factor under subsection 269TAE(1)(c) is only one of the "volume effects" factors that the Minister may have regard to, and the list is non-exclusive in any event. The immediately preceding factor, in subsection 269TAE(1)(b), provides that absolute volume is also a factor to which the Minister may have regard. Thus, we submit that the legislature intended that both factors are relevant to a consideration of "volume effects"-based injury.

Further, subsection 269TAE(1)(c) provides that another factor is *"any change or likely change, during a particular period, in the proportion that:…"*. The injury analysis period in the subject investigation is from 2013 to 2016, and not only from 2015 to 2016. The Australian industry's market share declined by less than 5% in 2016 as compared to 2015. And, as noted above, and in contrast to that decrease, Australian industry's market share increased by 7% in 2016 as compared to 2013, and by 16% in 2016 as compared to 2014. The Australian industry's market share was almost 5% higher in 2016 when compared to its average market share over the injury analysis period. That is, Australian industry significantly or materially increased its market share when comparing the investigation period, in three out of four of the other scenarios of comparison, being scenarios that are open for the Minister to consider, and which should be considered, in line with the statutory provisions of the Act.

Thus, we submit that the isolated decrease in market share between 2015 and 2016 cannot justify the PRR's proposal to affirm the finding that the Australian industry suffered material injury due to volume effects during the four year injury analysis period. The fact is that the Australian industry's market share during the investigation period did not reduce when the injury analysis period is examined as a whole, and did not reduce when compared to two out of the three 12 month periods in the injury analysis period. We respectfully submit that it is inappropriate to "brush off" those three equally relevant comparison outcomes,[1] and to limit its focus on a market share comparison between 2015 and 2016 alone. The overall comparisons overwhelmingly withstand the proposition that the Australian industry's market share "decreased".

We submit that the PRR also fails to address specific aspects of the ADRP's reinvestigation requests, and the context in which those requests were made by the ADRP. For example, the ADRP:

> *…also request[s] that the ADC reinvestigate its conclusion on volume effects at Section 8.5.5 of REP 418, which Nervacero claims is a, "pre-emptive finding". For the reasons set out in*

[1] The PRR proposes to affirm its finding of volume effects injury "notwithstanding" these other trends (page 22).

> *Schedule 1 (Paragraphs 3 (a) – (b)), I do not consider that there is sufficient data or a proper analysis of the data in Section 8.5 of REP 418 for the ADC to reach the conclusion, in respect of volume effects relating to material injury, that OneSteel lost market share to the "dumped" imports. I therefore do not consider this to be a reasonable finding of the ADC and therefore request a reinvestigation of the conclusion of volume effects of the dumped imports in respect of the injury finding, based on a comprehensive and accurate analysis of market share.* [footnote omitted][2]

At Schedule 1 paragraph 3(b), being one of the paragraphs to which the ADRP refers in its specific reinvestigation request, the ADRP states:

> *The only analysis in Section 8.5 of the market share of "dumped" imports is the statement by the ADC referred to above, that the decline in market share experienced by OneSteel was "still evident when the exports from these two exporters during the investigation period are excluded from the analysis". As discussed above, this cannot be considered to a proper analysis by the ADC of the volume effects of the dumped imports let alone be considered to lead to the ADC coming to a causal conclusion that OneSteel, "lost market share to imports from the subject countries found to be dumping in the Australian rebar market over the investigation period."*

On our reading of the PRR these comments of the ADRP have not been addressed.

Further, the ADRP also instructs the Commission to undertake the following reinvestigation:

> *For the reasons set out in Schedule 1 (Paragraph 4), I also request that the ADC reinvestigate its finding of materiality of the volume effects (or market share) in respect of injury as reported at section 8.5 of REP 418 (including capacity to supply the market, OneSteel's own imports and other supply issues) and discussed in section 9.4 of REP 418, The reinvestigation is particularly in relation to OneSteel's own imports, and how they are reflected in the market share analysis, supported by Confidential Appendix 1, and in so far as OneSteel's domestic sales of the imported product are excluded from the calculation of its market share.*[3]

On our reading of the PRR there is no reasoning directed towards the materiality of any volume effects based injury, which the ADRP feels is important, and which we do as well, especially in light of the Australian industry's sharp increase in sales volume during the injury analysis period.

2 Non-compliance with causal link and non-attribution analysis request

We have pointed out in 1 above that the volume effects based material injury analysis continues to be flawed. There is also no explanation as to why the alleged "material injury" arising from market share loss was caused by the dumped imports, and not by other factors. Those factors include "other imports", which enjoyed an increase in market share from almost nil to 4%.

With respect, we submit that the causal link and non-attribution analysis in the PRR is insufficiently reasoned, and dismissive, and lacks objectivity. We wish to justify our observations as follows.

The ADRP requested the ADC to:

> *…reinvestigate the reasoning and findings in respect of its non-attribution analysis of injury caused by factors unrelated to dumping of the goods under investigation in accordance with s.269TAE(2A), and specifically in respect of supply restrictions imposed by OneSteel.*[4]

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2 Reinvestigation request 2.a.(iv), page 4

3 Reinvestigation request 2.a.(v), page 4.

4 Reinvestigation request 2.b, page 4.

The PRR only responds to the specific issues of supply restrictions imposed by OneSteel, and fails to address other relevant factors under section 269TAE(2A). We again refer the Commission to the examples of non-dumping factors listed in Nervacero's review application:[5]

- injury associated with related party sales;
- effect of "other imports";
- OneSteel's own operation conditions;
- supply restrictions imposed by OneSteel; and
- non-price factors;

(a) Capacity related supply issues

The ADRP laid out its request in respect of this factor quite clearly in its reinvestigation request, and specifically explained its reasons at paragraph 5(a) of Schedule 1:

> *5. There are two aspects to this challenge of the non-attribution claim in respect of supply restrictions, being firstly, OneSteel's capacity restraints and secondly, OneSteel's own restrictive trade practices. These issues were addressed in Sections 9.4.4 and 9.8.9 of REP 418.*
>
> *a. With regard to OneSteel's capacity restraints:*
>
> - *the ADC concludes that "on the basis of verified data it is satisfied that OneSteel had the capacity to at the very least maintain its market share during the investigation period". The ADC does not however explain what the verified data related to nor expands on its analysis, in coming to this conclusion.*
> - *The ADC stated that while there was evidence of "supply issues" due to surge in international scrap prices, "there is no evidence of wide spread supply issues such as would have caused a reduction in the market share experienced by OneSteel". My concern is whether that this meets the requirements of Article 3.5 and s.269TAE(2A) which imposes a positive obligation on the authority to separate the injurious effects of other factors from the injurious effects of the dumped imports so as to positively determine that the dumped imports are causing material injury. There was clear evidence of some supply issues and the ADC was obliged to enquire further and properly consider and analyse the issue before coming to a reasoned conclusion as to whether the dumped imports were causing material injury. I have concerns as to whether the ADC met this standard*

On our reading of the PRR these issues are not addressed.

Under Part 4.4.2.1, in perplexing fashion, the PRR states:

> *The Commission found that OneSteel operated at significantly below its rebar production capacity during the reinvestigation period.*

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5 These non-attribution factors are set out in pages 20 to 26 of Nervacero's review application.

> *On that basis the Commission preliminarily finds on the evidence available that OneSteel's capacity for supply of rebar is not constrained and accordingly there could have been no injury to OneSteel arising from capacity constraints.*

We do not understand this statement. The PRR also states:

> *The Commission notes that OneSteel has at times put quotas on the amount of rebar supplied to some customers and imported rebar that it might otherwise have produced itself. OneSteel has pointed to shortages of rebar switching from imports to seeking supply from OneSteel and its own customers seeking supply on an un-forecasted basis.* [underlining supplied]

These evidence point to the opposite finding to that which the PRR attempts to reach, which is that OneSteel is not constrained. If OneSteel has no capacity constraint, and has no supply issues, then it would have had no problem supplying customers, and would not have had to placed quotas on its sales to customers, nor to import rebar itself. Regardless of the causes or reasons for such supply constraint, or whether they are labelled a *"transient supply issue"* or similar, they are OneSteel's own capacity and supply issues and have nothing to do with dumped imports. They are factors that the Commission was called upon to consider in the original investigation, and that the Commission has now been called upon by the ADRP to reinvestigate in this reinvestigation. The PRR fails to actively or cogently consider this issue. It *denies* that such a supply issue exists, but at the same time cites excuses for the *existence* of such supply issue.

The PRR does not explain its assertion that:

> *Given OneSteel's latent capacity its responses are best characterised as transient supply issues. Any injury arising from transient supply issues would be de minimis and should not materially affect the finding that the Australian industry suffered material injury.*

This finding cannot be reconciled with the Commission's other assertion that every sale "lost" to dumped imports represents an injury caused to the Australian industry.

We also take issue with *"further observations"* made by the PRR in this regard:

> *To the extent that OneSteel's supply issues arose from existing customers bringing orders forward to beat price increases, there would be no net impact on quantities supplied by OneSteel.*[6]

It is not clear what it is that this observation is attempting to say. If OneSteel's "*supply issues*" are that it made more sales to customers, who brought their orders forward, then the impact of its inability to supply other customers would be a direct result of that "supply issue", and it must not be attributed to dumped imports. This is also consistent with the circumstances in which OneSteel made more sales than ever during the injury analysis period, despite the slight decrease in market share.

> *The Commission's analysis of volume effects set out above in Section 4.4.1 includes rebar imported by OneSteel in the market share for the Australian industry; notwithstanding that the analysis shows that the Australian industry suffered volume injury.*[7]

It is also not clear what is being said here by the Commission. If OneSteel did not import rebar, then its market share would have been even lower, however that would too have been caused OneSteel's inability or unwillingness to supply.

> *To the extent that the Australian purchasers of rebar switched from imports to supply from OneSteel because of international shortages of rebar and concomitant price increases (i.e. not*

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6 PRR, page 25

7 Ibid

> *because exporters ceased dumping), injury to OneSteel from dumping may rather have been underestimated.*[8]

With respect this does not make sense to us. How is it that customers trying to buy more from OneSteel, which the Commission says is causative of OneSteel's inability to supply, indicate an underestimation of injury caused by dumped imports? We urge the Commission to explain its logic to the ADRP.

(b) Restrictive trade practices related supply issues

The ADRP also specified, in its reinvestigation request, why the analysis in Report 418 concerning restrictive trade practices was unsatisfactory. It did so as follows:

> *b. With regard to OneSteel's own allegedly restrictive trade practices:*
>
> - *the ADC in response to submissions on supply issues by Plascorp Pty Ltd (Plascorp), SRCM Pty Ltd (SRCM); Lyndons; Sanwa and Nervacero, and OneSteel, appeared to accept OneSteel's explanations without further enquiry or comprehensive analysis.*
>
> - *While acknowledging that the submissions suggest that OneSteel's "adopts trade practices" that provide its downstream related party entities with a competitive advantage, the inability of the ADC to "draw any conclusion" that the injury experienced by OneSteel is due to its own practices and its unexplained assertion that these factors simply did not affect its view that dumping was the cause of material injury to the Australian industry, could fall short of the requirement under Section 269TAE(2A) and the ADA, which requires a proper and comprehensive consideration of the effect of other factors.*

The PRR fails to address the ADRP's concerns.

The PRR does not reject Nervacero's comment that OneSteel engaged in practices such as:

> *refus[ing] to directly supply some parties under its sales policy and preferred customer profile or only to do so under certain conditions (for example a customer must buy at least 80 per cent of its total requirements from OneSteel).*

The PRR defends OneSteel's sales policy as *"not restrictive trade practices, rather …reflect normal commercial practice across Australian economy"* by assessing whether OneSteel's practices are in breach of section 46 of the *Competition and Consumer Act 2010* ("the CC Act"). The Commission state in the PRR that it has *"a number of issues with Nervacero's claims concerning refusal to supply"* under the CC Act's *"substantially lessening competition"*.

We will refrain from entertaining the Commission's frolic with section 46, and its passing of judgement about breach under and offences prescribed by the CC Act. We remind the Commission that the reference to *"restrictive trade practices of, and competition between, foreign and Australian producers of like goods"* under Section 269TAE(2A)(d) of the Act is not defined by or limited to a breach of the CC Act. Whether or not Nervacero or anyone else has brought claims against OneSteel under the CC Act is irrelevant to the consideration the Minister must have under the Act. If OneSteel's business practices restrict supply then they are clearly trade restrictive in nature. The consideration under the anti-dumping provisions of the Act go to the proposition that, by engaging in restrictive trading, the Australian industry may have injured itself. Refusal to supply, of whatever magnitude and whatever intent, restricts supply and reduces sales that otherwise would have been made.

For example, if there is any truth to the Commission's suggestion that OneSteel had no capacity constraints, in a physical sense, then the only explication for the findings that it engaged in its own

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8 Ibid

importing and did not fully supply the market are that it manipulated its market dominant position for its own ends. In circumstances where it operates at both the production and downstream fabrication levels of the supply chain, the implications of this are clear.

Calling such restrictive trade practices "normal", and pronouncing on their alleged compliance with the CC Act, does not discharge the obligation placed on the Commission by the ADRP's request to consider the effect of such practices in the non-attribution analysis. Indeed, we find it strange that the PRR states:

> *The Commission does not consider that a customer choosing dumped rebar over Australian produced rebar available on normal commercial terms can properly be characterised as non-attributable injury.*

This statement is misplaced, when the issue here is precisely that the Australian-produced rebar was one way or the other *unavailable* to the customer. Further, the statement appear to betrays a biased view that as long as a customer choses allegedly dumped rebar over Australian-produced rebar on normal commercial terms, then the Australian industry would necessarily suffer injury and such injury must necessarily be attributed to dumping.

Once again, we recall the ADRP's request and its specific criticism of the original findings in Report 418:

> *The ADC should reinvestigate its reasoning and findings in respect of its non-attribution analysis of injury caused by factors unrelated to dumping of the goods under investigation in accordance with s.269TAE(2A), and specifically in respect of supply restrictions imposed by OneSteel. I set out below my reasons for making the request in respect of this finding:*
>
> > *i. Nervacero submitted that a number of parties claimed that a key reason for customers' reliance on imported goods either wholly or to some degree, was because of OneSteel's own capacity and restrictive sales practices, which placed these customers' independent business at risk. Nervacero identified various factors in this regard, both in respect of capacity restraints and in respect of OneSteel's own restrictive trade practices.*
> >
> > *ii. The obligations on the ADC in respect of the "non-attribution analysis" are contained in s.269TAE(2A) and articulated in the Manual, which refers to the third and fourth sentences of Article 3.5 of the ADA. The WTO Appellate Body has made it clear that the ADC must separate the injurious effects of other factors from the injurious effects of the dumped imports so as to determine that the dumped imports are causing material injury. The method or approach the ADC chooses to use to undertake this task is a matter for it, but the need to properly examine any other factors which may be causing injury to the domestic industry is clear and reflected in s.269TAE(2A) of the Act. This requires a satisfactory explanation of the nature and extent of the injurious effects of the other factors, as distinguished from the injurious effects of the dumped imports. I do not consider that the ADC has met this standard in respect of supply restrictions imposed by OneSteel, for the reasons discussed in the attached Schedule 1 (Paragraph 5).*
> >
> > *iii. I agree with the ADC in its submission that it considers that a relevant question is whether OneSteel had lost sales during the investigation period to dumped goods from the countries subject to investigation, in relation to the customers that it might otherwise have supplied or expected to supply. However, the ADC did not properly consider or comprehensively analyse the data and documents, to which it had access, to answer this question, or attempt to quantify or estimate OneSteel's "lost" sales from supply restrictions, or provide a satisfactory explanation of the nature and extent of the injurious effects of the supply restrictions.*

> *iv. I do not consider that the ADC's analysis meets the requirements of Article 3.5 and s.269TAE(2A) which imposes a positive obligation on the authority to separate the injurious effects of other factors from the injurious effects of the dumped imports so as to positively determine that the dumped imports are causing material injury.* [underlining in original, footnote omitted]

On our reading of the PRR it fails to comply with any of these reinvestigation requests, either adequately or at all. Instead, in our view the PRR rebelliously defends the Commission against the valid concerns of the ADRP, and trenchantly sides with OneSteel, rather than carefully and considerately complying with the reinvestigation request and reporting back to the ADRP in an objective fashion.

The PRR does not recognise, address, or separate any injurious effects on the Australian industry arising from other factors. The proposal in the PRR to affirm the finding that dumped imports of rebar caused material injury to Australian industry continues to be an *ipso facto* exercise, and must fail.

3 Non-injurious price calculation does not result in a non-injurious price

The ADRP's reinvestigation request states:

> *In reinvestigating this finding the ADC should reconsider its calculation of the NIP in respect of Nervacero, for the following reasons:*
>
> *i. In the ADC's consideration of the NIP it states:*
>
> *"While OneSteel cannot be injured by its own imports. OneSteel does not set its price to individual customers according to the lowest price offer in the market. It can therefore be injured by all the dumped price offers in the market including Nervacero's price." (emphasis added)*
>
> *ii. This statement appears to be contradictory and indicates a flawed approach in the ADC's consideration of NIP by, on the one hand recognising that OneSteel cannot be injured by its own imports, while on the other hand stating that because it sets its price to individual customers according to the lowest price offer in the market, it can be injured by dumped price offers including Nervacero's price (from which it imported). This seemed to indicate that in calculating the NIP for Nervacero, the ADC incorrectly took into consideration both its own imports from Nervacero as well as those imports by Nervacero's customers in Australia.*
>
> *I therefore request that the calculation of the NIP be reinvestigated, with the exclusion of the data relating to OneSteel's own imports from Nervacero's, in line with the ADC's own submission that One Steel cannot be injured by its own imports.*

We note that the PRR proposes to calculate a new non-injurious price by way of calculating a weighted average normal value corresponding to *"non Onesteel exports"*. In our view, this approach still falls short of calculating a NIP that effectively *excludes* the effect of the non-injurious sales to OneSteel, or that arrives at a minimum price level necessary to prevent the dumping caused injury to OneSteel.

First of all, we submit that the ADRP's request for an "*exclusion of the data relating to OneSteel's own imports from Nervacero's, in line with the ADC's own submission that One Steel cannot be injured by its own imports"* requires more than a simple mathematical exclusion of export volume to OneSteel in the calculation of the weighted average normal value as proposed by the calculation in the PRR. The purpose of the exclusion is to account for the non-injurious exports of Nervacero in the calculation of the NIP. As established, Nervacero's exports to OneSteel itself are naturally non-injurious to OneSteel. Such sales also highlight the degree of OneSteel's inability and/or unwillingness to supply the Australian market with its own production – which has nothing to do with dumping or dumping related injury. As the Commission's export volume analysis shows, Nervacero's exports to OneSteel accounted for

[CONFIDENTIAL TEXT DELETED - number]% of its total Australian sales during the POI. This includes [CONFIDENTIAL TEXT DELETED - number]% of Nervacero's total Australian sales of diameter [CONFIDENTIAL TEXT DELETED - number] rebar coil, and [CONFIDENTIAL TEXT DELETED - number]% of its total Australian sales of diameter [CONFIDENTIAL TEXT DELETED - number] rebar coil. The non-injurious nature of these *substantial* volumes of exports must be appropriately accounted for in the NIP calculation. The current calculation, which simply removes the "weight" of such export volumes in the weighted average normal value calculation does not achieve this objective. This is shown in the near identical "non-injurious price" based effective duty rate calculated in the PRR and the full dumping margin based duty rate, a change of only [CONFIDENTIAL TEXT DELETED - number]% from [CONFIDENTIAL TEXT DELETED - number]% to [CONFIDENTIAL TEXT DELETED - number]%. In our view, the simple removal of a certain export volume in the calculation of normal value *ignores* Nervacero's non-injurious exports, rather than *excluding* them. The methodology does not *account for* and *recognise* the non-injurious effect of a substantial proportion of Nervacero's exports for which the full dumping margin was calculated.

Accordingly, at the very least, and without detracting from our primary submission that a single non-injurious price should be calculated for all dumped imports under investigation consistent with the cumulative injury analysis approach, we respectfully submit that the non-injurious price should be worked out as a combined weighted average price of the following two components:

- the weighted average normal value for Nervacero's export sales *excluding* sales to OneSteel, which is considered by the Commission to reflect non-injurious price for the non-OneSteel sales; AND

- the weighted average export price of Nervacero's sales to OneSteel, which are considered to reflect a non-injurious price *per se*.

We submit that only in this way can the *effect* of Nervacero's exports to OneSteel be properly excluded and accounted for. Based on our estimation, this revised calculation would result in a weighted average non-injurious price of EUR[CONFIDENTIAL TEXT DELETED - number]per metric tonne, or an *"Effective rate of duty based on revised NIP"* of [CONFIDENTIAL TEXT DELETED - number]%.[9] A illustration of the proposed calculation is attached, using the same format of RPP's calculation at the "*Wt av normal value*" worksheet as the base.[10] [CONFIDENTIAL ATTACHMENT]

Secondly, we would like to reiterate our submission in the Application that the non-injurious price concept is not for the purpose of *"correct[ing] dumping"*.[11] Anti-dumping duty can only be imposed to the extent necessary to address any material injury caused by dumping. A non-injurious price is the minimum price necessary to prevent injury caused by dumping. This recognises that even if dumping has caused material injury, it may not be necessary to impose dumping duty to the full extent of the dumping margin. In this context, we submit that Nervacero's weighted average normal value cannot represent the "minimum price necessary".

We respectfully refer the Commission and the ADRP to our submission in this regard again:

> *Such finding deprives the requirement to work out a non-injurious price for the Australian industry as a whole under the Act of any meaning, and is unsustainable given that the Australian industry competes in the Australian market for rebar with goods at dumped prices as well as goods at un-dumped prices, and with goods under investigation and goods not under investigation. The purpose of determining injury causation, and non-injurious price, is not to make sure "dumping" is "corrected". If that is the case then there should not have been any*

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9 This is of course without prejudice to our grounds of review that the current normal value calculation are affected by other errors which resulted in inflated dumping margin.

10 Other information, such as export volume and prices are sourced from the same confidential appendix to the RPP.

11 See Report 418 at page 96, Nervacero ADRP Application, at page 12

injury and non-injurious determination at all. With respect we submit that the Commission's determination missed the mark, and that it shows an unfortunate misunderstanding of the exercise that it is required to undertake.

The flaws are highlighted by the Commission's adoption of a cumulative approach to injury analysis which is entirely predicated on the premise that rebar coil and rebar straights are substitutable goods, such that the end user makes a decision to buy one or the other product based on price alone. Having deemed rebar coil and rebar straights to be substitutable, the Commission has concluded that the lowest priced exports did not cause the injury. The Commission says that all price offers – at any price point – are causing injury to the Australian industry.

We recognise that the ADRP has not requested the Commission to conduct a reinvestigation of the NIP by way of calculating a cumulative based NIP as Nervacero has requested. However we would like to reiterate this point as it was a primary aspect of Nervacero's grounds of review concerning the NIP, and one from which Nervacero does not retreat.

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We respectfully ask that the Commission to revise its reinvestigation report by:

- reconsidering and withdrawing its proposed finding that Australian industry suffered material injury due to volume effects from dumped imports, and instead to find that there was no such material injury caused by dumped imports;
- reconsidering and withdrawing its proposed finding that the Australian industry's material injury was not attributable to factors unrelated to dumping, and instead to find that there is insufficient evidence to establish that material injury was caused by dumped imports;
- reconsidering and revising its proposed recalculation of the NIP; and
- to do so in contemplation of the issues raised in this submission, and to provide a copy of this submission to the ADRP as part of the final reinvestigation report.

Yours sincerely

Charles Zhan
Senior Associate