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22 May 2020

**Mr A Fontanini**  
**Investigations 2**  
**Anti-Dumping Commission**  
**GPO Box 2013**  
**Canberra**  
**Australian Capital Territory 2601**

**By email**

Dear Mr Fontanini

## **NatSteel Holdings Pte Ltd**

### **Submissions concerning initiation of Continuation Inquiry 546**

We are the lawyers for NatSteel Holdings Pte Ltd (“**NatSteel**”).

NatSteel is a Singapore manufacturer and exporter of rebar products to Australia. NatSteel is subject to the anti-dumping measures which are the subject of Continuation Inquiry 256 (“the inquiry”).

NatSteel is both disappointed and frustrated by the application lodged by InfraBuild (Newcastle) Pty Ltd, formerly Liberty OneSteel (Newcastle) Pty Ltd (“InfraBuild”) with respect to the initiation of this inquiry with respect to exports from Singapore.

In particular, NatSteel refers to:

- the clear and unequivocal acknowledgement by InfraBuild, in its application, that there was no dumping by NatSteel, which we elaborate in Section A; and
- a lack of fair disclosure by InfraBuild of the recent past and emerging situation in the Australian market for rebar products, which we elaborate in Section B; and
- the lack of any cogent basis for InfraBuild’s assertion of the potential for dumping and material injury to be caused in the future unless the anti-dumping measures are continued with respect to NatSteel, which we elaborate in Section C.

#### **A No evidence of dumping**

In preparing a recommendation to the Minister, the Commissioner must consider:

*...whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a*

*continuation of, or recurrence of, the material injury that the measures are intended to prevent.*<sup>1</sup>

Legislative intention and proper administrative procedure requires that InfraBuild, in making its application for this inquiry, should first have a reasonable basis for asserting that there will be a continuation or a recurrence of material injury if the anti-dumping measures imposed against NatSteel are allowed to expire.

We respectfully submit that InfraBuild's application fails to demonstrate a reasonable basis for these assertions with respect to NatSteel. InfraBuild has clearly and unequivocally acknowledged that there was no dumping by NatSteel. InfraBuild expressly states in its application that:

*Since measures were imposed in November 2015, the weighted average export price of rebar from Singapore remained above the estimated normal value, with some compression in margins between 1 July 2017 to 31 December 2018.*<sup>2</sup>

*Negative dumping margins have been observed across the analysis period (commencing 1 July 2013).*<sup>3</sup>

Indeed, InfraBuild's application acknowledges that NatSteel did not conduct dumping activities:

*On the basis of estimates of normal values for Singapore, exports of rebar to Australia from Singapore did not appear to be at dumped prices.*<sup>4</sup>

Accordingly, the assertion made in the application *is in NatSteel's favour*, i.e., that there is no evidence of dumping by NatSteel across the analysis period, being ever since July 2013.

This refutes any basis for extending the continuation inquiry to NatSteel. NatSteel has certainly reaped no benefit in this time, with market share now below that prior to the imposition of measures, as acknowledged by InfraBuild.<sup>5</sup>

**[CONFIDENTIAL TEXT DELETED – commercial arrangements].**

## **B Failure to disclose or acknowledge Best Bar acquisition**

InfraBuild's application fails to adequately acknowledge that Best Bar has been and continues to be an export customer for NatSteel's rebar. **[CONFIDENTIAL TEXT DELETED – commercial arrangements].** In the present circumstances, this is a significant fact, because InfraBuild has proposed that it will acquire Best Bar. Indeed, this is not just a "proposal". The ACCC commenced an informal public merger review with respect to the proposed acquisition on 25 March 2020.<sup>6</sup>

<sup>1</sup> *Customs Act 1901* ("the Act"), s 269ZHD(2)(b).

<sup>2</sup> Application, pp. 27-8.

<sup>3</sup> *Ibid*, p. 28.

<sup>4</sup> *Ibid*, p. 6.

<sup>5</sup> *Ibid*, p. 62.

<sup>6</sup> <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/infrabuild-trading-pty-ltd-best-bar-pty-ltd>

InfraBuild's application is dated 6 February 2020. This continuation inquiry was initiated on 3 March 2020. It would therefore seem eminently reasonable to assume that discussions with respect to the proposed merger and the terms on which it would take place had been completed before or during the period in which InfraBuild was considering and preparing its application for this continuation inquiry.

To omit this fact, and not to either disclose the potential acquisition or to explain the implications for the Australian market because of such an acquisition, is a significant omission on the part of InfraBuild. The application therefore omits a highly relevant consideration, and is therefore misleading. If that fact was not disclosed to the Commission in some confidential part of InfraBuild's application – and this does not appear to have been the case – then we would go so far as to say that the application was a misuse of the process afforded to Australian industry by Section 269269ZHC of the Act.

The form directs applicants as follows:

*The application must include a detailed statement setting out reasons for seeking continuation of the anti-dumping measure. Applicants must provide evidence addressing whether, in the absence of measures, dumped or subsidised imports would cause material injury to the local industry producing like goods.<sup>7</sup> [underlining supplied]*

Further, the person signing the application form was required to attest to the belief that the application:

- provides reasonable grounds for continuation of the anti-dumping measure; and
- is complete and correct to the best of my knowledge and belief.<sup>8</sup> [underlining supplied]

We submit that the Commission was not provided with an accurate picture of the industry and market developments, being developments, which were well-known and, we would say, absolutely central to InfraBuild's motivations and strategy in applying for the continuation inquiry to be initiated. The acquisition is no less a matter for "prediction" with respect to the future than are the other industry and market factors that go to the question of whether dumping will cause material injury to recur in that future.

**[CONFIDENTIAL TEXT DELETED – commercial opinion].**

## **C No injury to justify the inquiry**

As a more general matter, InfraBuild's application fails to provide any reasonable basis for its bare and unsubstantiated assertion of "injury" or the prospects thereof so as to justify the initiation of the inquiry.

Contrarily, InfraBuild's application presents vast evidence on the strength of the Australian industry, for example:

*Overall the size of the Australian market grew by approximately 34 per cent between the 12-*

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<sup>7</sup> Application, page 4.

<sup>8</sup> Ibid, page 2.

*month period for 2019 as compared to the 12-month period for 2015.<sup>9</sup>*

*Overall, the Australian industry considers that this indicates that high levels of demand in the Australian rebar market will continue to be present from 2019 to 2024.<sup>10</sup>*

*It is not possible to conclude that the Australian industry has experienced price depression ...<sup>11</sup>*

*Sales volumes have increased year on year across the analysis period.<sup>12</sup>*

*Net sales revenue has increased year on year across the analysis period.<sup>13</sup>*

*Overall, the Australian industry's capital investment in rebar production improved.<sup>14</sup>*

*Overall, the Australian industry's rebar productivity improved.<sup>15</sup>*

*The Australian industry's stock-on-hand for rebar, based on its year-end closing stockholding position, declined overall during the analysis period.<sup>16</sup>*

These positive assertions clearly demonstrate the robust and improved nature of the Australian rebar industry. These statements clearly and unequivocally demonstrate that InfraBuild's application cannot be sustained. Proof for InfraBuild's bare and unsubstantiated assertion that revocation of the measures would create a likelihood, in the sense of a probability, that dumping will recur and cause material injury to the Australian industry is fundamentally lacking.

The application is therefore based on either irrational fear, or on anti-competitive intentions, or both, neither of which can support the initiation of such an inquiry.

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NatSteel has been a fully cooperative and compliant participant in the various investigations, reviews and assessments that have taken place over the past five years with respect to its imports of rebar to Australia.

It regrets having to communicate these critical views to the Commission, but finds that it must do so in the circumstances in which it finds itself. That said, we acknowledge that termination of the inquiry, simply because of the inadequacy of its initiation as against NatSteel, is unlikely.

Therefore, NatSteel will look forward to the Commission's due consideration of its concerns, and to a

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<sup>9</sup> Ibid, p. 49

<sup>10</sup> Ibid, p. 54.

<sup>11</sup> Ibid, p. 57.

<sup>12</sup> Ibid, p. 58.

<sup>13</sup> Ibid, p. 59.

<sup>14</sup> Ibid, p. 65.

<sup>15</sup> Ibid, p. 68.

<sup>16</sup> Ibid, p. 71.

recommendation to the Minister, based on that consideration, that the dumping measures imposed on NatSteel should be allowed to expire.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daniel Moulis', with a long horizontal flourish extending to the right.

**Daniel Moulis**  
Principal Partner

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