

**Canberra**  
6/2 Brindabella Circuit  
Brindabella Business Park  
Canberra International Airport  
Australian Capital Territory 2609

Canberra +61 2 6163 1000  
Brisbane +61 7 3367 6900  
Melbourne +61 3 8459 2276

[www.moulislegal.com](http://www.moulislegal.com)

**Brisbane**  
Level 4, Kings Row Two  
235 Coronation Drive  
Milton, Brisbane  
Queensland 4064

**Melbourne**  
Level 39, 385 Bourke Street  
Melbourne  
Victoria 3000

Australia



commercial + international

18 August 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**

### **Submission regarding the continuation of measures**

As you know, we act on behalf of NatSteel Holdings Pte Ltd ("NatSteel") with regard to this inquiry.

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## **A Introduction**

In a letter dated 29 July 2020, Infrabuild (Newcastle) Pty Ltd, formerly Liberty OneSteel (Newcastle) Pty Ltd ("Infrabuild") tries to substantiate its call for the continuation of measures against imports of steel reinforcing bar from, *inter alia*, Singapore, beyond their standard five-year operation.

The Commissioner cannot recommend the continuation of measures, unless:

*...the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.*

Although you are no doubt aware of this, it is important to reiterate, so that the submissions of InfraBuild can be considered within the correct legal context.

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Further to the above:

- Under Australian law “likely” has been defined to mean “*more probable than not*”. This aligns with Australia’s international obligations and is in line with the Commission’s ongoing practice.<sup>1</sup>
- Satisfaction of the “likelihood” that the expiration of the measures would lead to a continuation or a recurrence of the dumping the measures were intended to prevent must be based upon a foundation of positive evidence.<sup>2</sup>

It is in these legal circumstances that the relevant satisfaction must be considered.

From this, it is clear there is some onus on the applicant for the continuation of measures – in this case Infrabuild – to engender that level of satisfaction in the Commissioner, through the submission of positive evidence and cogent analysis of same. It is, after all, a requirement that the Commissioner be satisfied of the need for the measures *to continue*, rather than being satisfied of the need for the measures *to expire*.

Having reviewed Infrabuild’s submission, we respectfully submit that no compelling case for the continuation of measures has been presented. We see no basis for the Commissioner to be satisfied of the matters of which he needs to be satisfied in applying Section 269ZHF(2).

The reasons for this are discussed in this submission.

## **B It is unlikely that injurious dumping will recur**

Infrabuild’s attempted logic is that NatSteel will have “excess capacity”, and that this will cause NatSteel to dump goods on other markets should the measures be allowed to expire. This excess capacity is said to be a result of either (a) the economic impacts of COVID-19 on the Singaporean economy or (b) the outcome of a recent Malaysian anti-dumping investigation.

First, let us address Infrabuild’s misunderstanding regarding “excess capacity”.

To emphasise, NatSteel’s sales are consistently above its production capacity. For example, during the inquiry period, NatSteel’s total sales volume was [CONFIDENTIAL INFORMATION DELETED – sales volume] as compared to a full capacity of [CONFIDENTIAL INFORMATION DELETED – production capacity]. The sales volume was some [CONFIDENTIAL INFORMATION DELETED – percent] above its mill production capacity. NatSteel achieves this through the strategic and targeted importation and sale of products, including the goods under consideration. Therefore, we do not understand why there would be any concern regarding excess capacity generally. Even if demand contracts significantly, this would not result in “excess capacity”.

Further, even if that were not the case, NatSteel could not significantly expand sales to Australia to take-up unused capacity. This is because NatSteel has [CONFIDENTIAL INFORMATION DELETED – contractual arrangement], as the Commission’s records will attest. [CONFIDENTIAL INFORMATION DELETED]

<sup>1</sup> *Siam Polyethylene Co Ltd v Minister of State for Home Affairs* (No 2) [2009] FCA 838, paragraph 48. While this decision was appealed to the Full Federal Court in *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86, this interpretation of the term “likely” was accepted by all parties and was not overruled or questioned by the Full Federal Court, per paragraph 92.

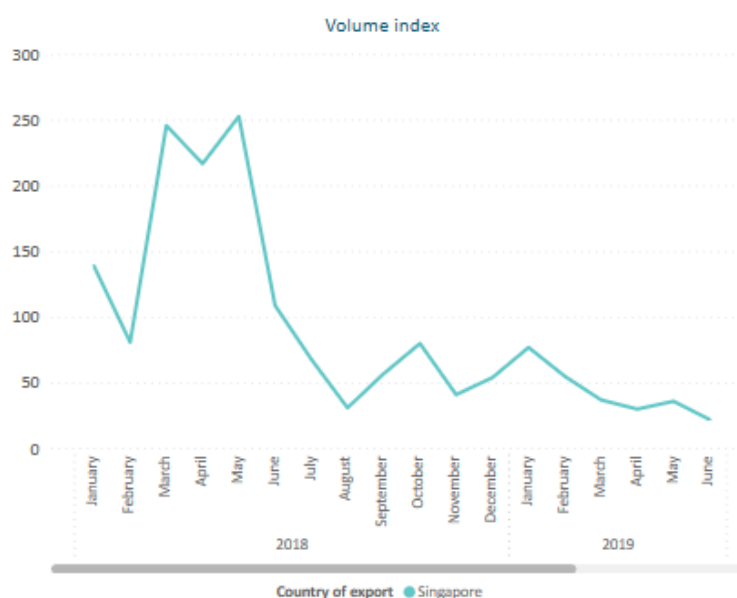
<sup>2</sup> Appellate Body Report, *US - Corrosion-Resistant Steel Sunset Review*, paras 110-113.

**DELETED – contractual arrangement].** Best Bar's demand for rebar is the only determinant for how much rebar NatSteel will sell to Australia.

In its submission, Infrabuild makes the suggestion that NatSteel has purposefully decreased the volume of its exports to Australia in order to somehow influence this continuation inquiry. This is rejected entirely. NatSteel's records since mid-2017 have been provided to the Commission. NatSteel has participated with the anti-dumping mechanism in an open, cooperative and transparent manner. Its sales volumes, at undumped prices, are a reaction to variations in demand in the Australian market. Nothing more.

The proposition that NatSteel can or would dump products on the Australian market to take-up excess capacity is without support. Infrabuild cites a fall in domestic Singaporean demand in 2018 which coincided with relatively high-levels of exports to Australia as evidence of this general proposition. However, when this point is considered in detail, it is disproven.

As per TRINDEX, the large majority of the exports referred to by Infrabuild occurred between February and May 2018.



The Commission considered these exports during Duty Assessments 146, 147 and 153 and determined that no actionable dumping occurred during that period. This volume of sales was driven by customer demand, not by NatSteel dumping. Again, due to its practice of supplementing domestic sales with imports, NatSteel has the ability to weather contractions in demand without that contraction impacting NatSteel's production capacity. Thus, Infrabuild's general proposition that lower domestic demand will lead to dumping is simply not supported.

Further to this, NatSteel is well aware of Infrabuild's propensity to apply for anti-dumping measures. We note that at present there are measures on imports from China, Korea, Spain, Taiwan, Indonesia, Thailand and Greece. In addition, Infrabuild applied for measures to be imposed against Turkish exports, but failed in that gambit on the basis that there was no actionable dumping or subsidisation of the goods.

No other market in which NatSteel competes is so highly protected by anti-dumping measures. Given this – what possible long-term benefit could NatSteel derive from dumping product on the Australian

market to any injurious degree? It has a customer with whom it has a good long-term relationship, and to whom it has consistently made sales that were not at dumped prices. Why would NatSteel jeopardise this, after having secured the removal of measures, by starting to dump at injurious levels? Infrabuild's cynicism is not based on any evidence, and conflicts with NatSteel's actual practice.

## **C Malaysian anti-dumping measures are irrelevant**

Infrabuild is preoccupied with the outcome of a Malaysian anti-dumping investigation earlier this year. The key elements of Infrabuild's submission appear to be that (a) the finding of a dumping margin is relevant to the continuation inquiry, and (b) that finding means that NatSteel will export more product to Australia.

Regarding the first point, NatSteel disagrees with the findings made in the Malaysian investigation and has instituted an appeal of those findings before the High Court of Malaya in Kuala Lumpur to have it set aside. NatSteel in no way considers the conclusions made by the Minister of International Trade and Industry to be legally sound, nor indicative of NatSteel's pricing practices.

Further we note that the measures relate only to steel bars, and do not include coil. This is important because coil represents [CONFIDENTIAL INFORMATION DELETED – percentage] of NatSteel's sales of the goods under consideration to Australia over the inquiry period. The Malaysian measures do not impact any sales of coil to Malaysia.

In any regard, we would suggest that the comprehensive history of NatSteel's exports to Australia as have been vetted by the Commission is much more persuasive than the outcome of a foreign investigation involving a different product mix and which is currently under judicial review.

The evidence before the Commission does not support the suggestion that NatSteel will divert volumes that were previously sold to Malaysia to Australia. While the measures may have been imposed in January 2020, preliminary measures were operative since September 2019. As per the information verified by the Commission, sales volumes to Australia did not and have not increased following the imposition of those preliminary measures.

[CONFIDENTIAL INFORMATION DELETED – table showing breakdown of monthly export volume]

Also of note, in the months following the imposition of the preliminary measures, NatSteel only exported a total of [CONFIDENTIAL INFORMATION DELETED – sales volume] of rebar straights. NatSteel has not reported any increase in volumes to Australia since the measures were imposed, including after the inquiry period concluded. If that has not happened already, why would it be likely to happen as a result of the measures that this inquiry is concerned with being removed? There is no similar fact evidence nor any other logic to support the suggestion that they would.

Finally, for the sake of completeness, we would further note that the significance of NatSteel's rebar sales to Malaysia decreased prior to the imposition of the measures, as illustrated below.

[CONFIDENTIAL INFORMATION DELETED – table showing annual sales volume to Malaysia]

The reason for this decrease in volumes was because [CONFIDENTIAL INFORMATION DELETED – market specific circumstances]. As a result, NatSteel has focussed on selling processed steel ([CONFIDENTIAL INFORMATION DELETED – non-goods under consideration]), rather than selling

rebar to Malaysia more generally. As the Commission is aware, NatSteel produces downstream rebar products – so if a market does not require rebar, or does not require it at a price that is beneficial to NatSteel, NatSteel can pivot to provide other goods to that market, from more simply processed rebar to fully fabricated products. Again, it does not need to dump rebar on the Australian market to adjust for the Malaysian measures.

Ultimately, this decrease in sales volume of reinforcing bar to Malaysia has not resulted in an increase in sales to Australia. Indeed, as already discussed, NatSteel's sales to Australia have decreased at the same time as its sales to Malaysia have decreased. Accordingly, the Malaysian measures – whether or not they remain in place – do not support the contention that Australia's measures should continue.

## **D The relevance of COVID-19 to this inquiry**

As of writing, Singapore has reported just over 54,000 cases, which have mercifully led to only 27 deaths. The measures taken by the Singaporean government have mitigated the more extreme outcomes that would have otherwise occurred.

NatSteel is an adaptive and dynamic enterprise. Being aware of the likelihood of a lockdown, NatSteel took the following measures to lessen the impact on its customers and staff:

- Production was halted from the second week **[CONFIDENTIAL INFORMATION DELETED – period]** in anticipation of the COVID-19 situation in Singapore, especially among the foreign workers. The stoppage was required to ensure NatSteel's staff were safe and to address all the safety measures required to be put in place as stipulated by the authorities.
- Operations were recommenced **[CONFIDENTIAL INFORMATION DELETED – month]**. NatSteel's output is now lower than before, however will improve as buffer stock is diminished and as demand begins to increase.

These measures were necessary to ensure the safety of NatSteel's staff, while securing supply to its customers. NatSteel makes no apologies for doing this. Arguing that the impact of COVID-19 on the Singaporean economy and on NatSteel's operations is a justification for the continuation of measures, as has been argued by Infrabuild, is crass, ill-informed and grotesquely opportunistic.

There can be no denying that a lockdown of a local population has a significant short-term effect on demand. However, by building up its stock prior to shutting down its operations, NatSteel has ensured that it can continue to service its customers. By shutting down its mill, NatSteel has avoided production of surplus stock during the period in which the most severe drop in the demand occurred. And, as noted, that effect is short-term. Even Infrabuild's submission notes that activity on construction sites is predicted to restart in August.

Further, Infrabuild's submission is concerned only with the construction industry. Its submission has failed to even mention the many infrastructure projects, which are predicted to restart relatively quickly. Currently, the following projects are on foot:

- North South Corridor which commenced in 2019 and is scheduled for completion in 2026;<sup>3</sup>
- Tuas Mega Ports projects, the second phase of which began in July 2019 and which is scheduled to continue until 2040;<sup>4</sup>
- JTC Logistic Hub;<sup>5</sup>
- JTC Metal Machinery Timber Hub;<sup>6</sup>
- Bulim and Tengah Redevelopment;<sup>7</sup>
- Punggol Digital District;<sup>8</sup>
- Jurong Region Line project, which is expected to be completed in 2028;<sup>9</sup>
- Marina Bay Sands fourth tower – this project also includes a 15,000-seat arena and additional exhibition space; and<sup>10</sup>
- Pulau Brani, Sentosa and Great Southern Waterfront Redevelopment.<sup>11</sup>

These bold, ambitious projects will reshape the face of Singapore for coming generations. They will drive massive increases in demand for the entire suite of products and services that NatSteel offers. There is no suggestion that these projects are to be mothballed. So, in the medium term, domestic demand for NatSteel's product is predicted to be better than it has been for the last five years. This again goes to show that Infrabuild's trumped-up fears with respect to Singaporean exports are illusory and, contrary to Infrabuild's submissions, that the measures should not be continued.

## E NatSteel's sales practices underline unlikelihood of dumping

NatSteel makes steel products. Its interest is in selling steel products – something that it has continued to do since the measures were imposed. Since those measures were imposed NatSteel has cooperated

<sup>3</sup> [https://www.lta.gov.sg/content/ltagov/en/upcoming\\_projects/road\\_commuter\\_facilities/north\\_south\\_corridor.html](https://www.lta.gov.sg/content/ltagov/en/upcoming_projects/road_commuter_facilities/north_south_corridor.html)

<sup>4</sup> <https://www.straitstimes.com/singapore/tuas-port-to-be-worlds-largest-fully-automated-terminal-when-completed-in-2040-pm-lee>

<sup>5</sup> <https://www.jtc.gov.sg/industrial-land-and-space/Pages/jtc-log-hub-gul.aspx>

<sup>6</sup> <https://www.jtc.gov.sg/industrial-land-and-space/Pages/timmac-kranji.aspx>

<sup>7</sup> <https://mynicehome.gov.sg/cs/mnh/article/2019-whats-up-in-tengah-the-newest-hdb-town>

<sup>8</sup> <https://estates.jtc.gov.sg/pdd>

<sup>9</sup> [https://www.lta.gov.sg/content/ltagov/en/upcoming\\_projects/rail\\_expansion/jurong\\_region\\_line.html](https://www.lta.gov.sg/content/ltagov/en/upcoming_projects/rail_expansion/jurong_region_line.html)

<sup>10</sup> <https://www.straitstimes.com/lifestyle/home-design/marina-bay-sands-fourth-tower-will-be-challenging-to-build-moshe-safdie>

<sup>11</sup> <https://www.channelnewsasia.com/news/singapore/ndr-2019-greater-southern-waterfront-pulau-brani-sentosa-keppel-11819376>

fully with the Commission in a number of duty assessments. These provide an ongoing testament to NatSteel's fair pricing practices:

[CONFIDENTIAL INFORMATION DELETED – table illustrating outcome of duty assessment applications covering May 2017 – November 2017]

When the outcomes of the different duty assessments are combined for the period 19 May 2017 to 18 November 2017, there is a clear no dumping margin. This trend continues in the following 6 months (19 November 2017 – 18 May 2018):

[CONFIDENTIAL INFORMATION DELETED – table illustrating outcome of duty assessment applications covering November 2017 – May 2018]

So, over a 12 month period there was no dumping based on the ultimate decisions of the Commissioner.

This trend continues during the inquiry period (1 January 2019 – 31 December 2019) in the present matter, with a margin of 0.6%.<sup>12</sup>

As the Commission is well aware, an application for dumping measures would need to be terminated upon a finding of a margin of less than 2%. This is derived from Article 5.8 of the Anti-Dumping Agreement, which refers to a margin of less than 2% as a *de minimis* margin. The term *de minimis* is an important one legally, deriving from the Latin maxim *de minimis non curat lex*. This roughly translates to “the law does not concern itself with trifles”. A *de minimis* margin is a *trifle*. It is not injurious, it is not actionable, it is certainly not “*dumping that the measures were intended to prevent*” per Section 269ZHF(2) of the Act. We would further note that, had NatSteel's selling cost adjustment been accepted, which NatSteel believes it should be, NatSteel would be firmly in no dumping territory.

NatSteel's ongoing performance, as reviewed and verified by the Commission clearly establishes its *bona fides* in terms of pricing. Given this context, we would suggest there is no basis to be satisfied that once the measures expire there would be a probable likelihood of a recurrence or continuation of dumping and of the injury the measures were intended to prevent.

## **F Impact of imports from Turkey**

As NatSteel noted in its initial submission, Infrabuild's performance has improved significantly since the measures were originally imposed, including increases in sale volume and net revenue. This has occurred while Infrabuild has been required to compete against imports from a number of sources, including NatSteel's undumped product.

Infrabuild has been particularly vocal about the impact of undumped imports from Turkey, noting variously that:

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<sup>12</sup> We note that there is a period of June 2018 – December 2018 where the Commission has yet to determine dumping margins – however NatSteel's pricing practices did not change during that period, and on NatSteel's own calculations, it was not dumping during that period.



- There has been a “strong correlation” between Infrabuild’s quarterly sales prices for the like goods and the quarterly FOB export price of the goods from Turkey between 2014 and 2018.<sup>13</sup>
- Infrabuild’s prices were “heavily influenced” by the prices of imports from Turkey. This is because Infrabuild maintains a “market-based” pricing policy for its customers.<sup>14</sup>
- Infrabuild has responded to price undercutting by imports from Turkey by reducing its prices for like goods.<sup>15</sup>
- This trends was considered to have continued through 2018 in what Infrabuild characterises as a “surge” at “historically low” export prices. Infrabuild even volunteers that Turkish rebar was exported at prices that undercut “all other sources” including, presumably, NatSteel’s own exports.<sup>16</sup>

But - these imports have been found not to have been dumped.<sup>17</sup>

Given this, NatSteel suggests that the Commission determine a non-injurious price based upon import prices of rebar imported from Turkey. This product has not been dumped, and yet, according to Infrabuild, has impacted its performance. Those prices were also, reportedly, lower than those from other sources, including from NatSteel.

That notwithstanding, even with this competitive pressure Infrabuild has been able to improve its performance significantly in recent years, as it admits in the application for this inquiry. Accordingly, any non-injurious price should not be greater than the price of exports from Turkey, as it is that price that represents the competitive, non-dumped price in the Australian market.

## G Conclusion

Infrabuild’s position that the measures should be continued is based upon fundamental misunderstandings of the nature of NatSteel’s business, of the Singaporean market, and of the scope and impact of the Malaysian anti-dumping measures.

Having corrected those misunderstandings, and in line with our other submissions, we respectfully submit that there is no basis upon which the Commissioner should be satisfied that the revocation of the measures would be likely to lead to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

Accordingly, we submit that there is no basis to continue the measures as against NatSteel, and that they therefore should be allowed to expire.

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<sup>13</sup> *Application for the publication of dumping and/or countervailing duty notice, Steel Reinforcing Bar exported from Turkey*, October 2018, (EPR file No. 1 for Investigation 495), page 47.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Letter from Liberty Steel to Australian Anti-Dumping Commission regarding Dumping and Subsidisation Investigation No. 495 concerning steel reinforcing bar exported from Turkey, dated 4 March 2019 (EPR File No. 19 for Investigation 495), page 5.

<sup>17</sup> *Termination Report No. 495A – Alleged Dumping and Subsidisation of Steel Reinforcing Bar Exported to Australia from the Republic of Turkey* (EPR File No. 53 for Investigation 495), page 77.



Yours sincerely

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

**Daniel Moulis**  
Partner Director  
**+61 2 6163 1000**