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

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

Melbourne
Level 39, 385 Bourke Street
Melbourne
Victoria 3000

Australia

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

www.moulislegal.com

moulislegal

commercial + international

01 October 2020

The Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2601

By email

Dear Director

NatSteel Holdings Pte Ltd
Review 566 - steel reinforcing bar from Singapore and other countries

We are the lawyers for NatSteel Holdings Pte Ltd ("NatSteel").

As you know, NatSteel is a Singapore manufacturer and exporter of rebar products to Australia, and is subject to the anti-dumping measures which are presently the subject of Continuation Inquiry 546 ("the existing inquiry").

NatSteel is both disappointed and frustrated by the initiation of a review of those anti-dumping measures (Review 566) ("the new review"), as instigated by the application of InfraBuild (Newcastle) Pty Ltd, formerly Liberty OneSteel (Newcastle) Pty Ltd ("InfraBuild").

Our client has a number of very serious concerns about the initiation of the new review, to the extent that the initiation of the review is considered by our client to be an abuse of process.

NatSteel believes the new review is identical in form to the existing continuation inquiry, which itself involves a review of the measures. Both are intended by the Commission to take place at the same time, with the inquiry period in the continuation inquiry and the review period in the new review overlapping to a significant degree. In this regard, whether the continuation inquiry is a "formal" review or not is irrelevant. It is a review which, under Australian law, can lead to a decision by the Minister to revise the variable factors with respect to the goods concerned. A review has taken place within the continuation inquiry, thus the new review has exactly the same objective as one of the objectives to which the continuation inquiry is directed.

Thus, the new review purports to commit the Commission to undertake a review of a period where the large part of the period is already subject to a pre-existing and continuing review process. This, we say, betrays error. It is an abuse of process on Infrabuild's part, which should be resisted and moderated by the Commission in the interests of fairness and natural justice.

Section 269ZC(2) of the *Customs Act 1901* sets out the matters of which the Commissioner must be satisfied in deciding whether to accept (not reject) an application for a review. It provides as follows:

> *For the purposes of subsection (1), the matters to be considered in relation to an application are:*
>
> *(a) that the application complies with section 269ZB; and*
>
> *(b) that there appear to be reasonable grounds for asserting either, or both, of the following:*
>
> *(i) that the variable factors relevant to the taking of anti-dumping measures have changed;*
>
> *(ii) that the anti-dumping measures are no longer warranted.*

Given that the Commissioner is already considering, and indeed has already assessed, the "variable factors" relevant to the taking of the measures, in the continuation inquiry, the Commissioner already knows that the variable factors have "changed" from those presently in effect and did not need the review application to be satisfied of that proposition.

Moreover, the Commissioner has expressed the opinion that the measures are no longer warranted with respect to NatSteel, meaning that there is no purpose served by the initiation of the new review. It should have been recognised that the existing continuation inquiry procedures are continuing.

The Commissioner has sufficient discretion to have considered postponing any new review such that:

- it was not initiated until certainty had emerged from the outcomes of the continuation inquiry, there being no time limit stipulated for the initiation of a review after a decision not to reject a review application;
- once it had been initiated, a later and not overlapping review period could be indicated in the initiation notice to be the period in which the variable factors would be determined in the new review.

The new review has been initiated in an urgent and precipitous manner.[1] It need not have been so. We respectfully submit that the interests of fairness and the proper exercise of administrative discretion should have led to postponement of such a review.[2]

---

1 This is borne out by the fact that the initiation notice was published on 10 September 2020, which is (a) the 20th day after the date of the application, (b) the 20th day after the application was endorsed as having been received, and (c) the 19th day after the date the Consideration Report says it was received. The 20 day period is the period within which the Commissioner must make a decision not to reject an application. It is not the period within which the Commissioner must issue a notice initiating an application. Review procedures are open to extension due to circumstances in which *"the Minister is satisfied that it is reasonable to do so"*.

2 The principle that exporters and other interested parties should not be subject to trade harassment by domestic industries is given voice in paragraph 7.1 of the *Implementation-Related Issues and Concerns, Decision of 14 November 2001*, WT/MIN(01)DEC/17 (20 November 2001), whereby investigating authorities are required to take special care in examining successive applications for the initiation of anti-dumping investigations with respect to the same product from the same member.

These procedures involve the expenditure of time and money. NatSteel and other interested parties are therefore prejudiced by the initiation of the new review. NatSteel decries this tactical manoeuvring practiced by Infrabuild with regard to these anti-dumping measures. The Commission should not disregard the due process rights of interested parties including NatSteel.

In recognition of these matters NatSteel requests:

- an assurance that the new review will be immediately discontinued against NatSteel following a decision of the Minister that is in line with the findings of the Statement of Essential Facts in the continuation inquiry; and
- meanwhile, that NatSteel's submission in the new review be postponed until after the decision of the Minister in the existing inquiry, with an express reservation of rights on the part of NatSteel.

Yours sincerely

Daniel Moulis
Principal Partner
+61 2 6163 1000