Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

Use this form[1] to apply for review of a reviewable decision of the Minister (or his or her Parliamentary Secretary) made on or after 2 November 2015.

Any interested party[2] may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Fees
Your application must be accompanied by the application fee. Please provide a copy of your proof of payment with the application. Information about fees and refunds is on the ADRP website.

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given seven (7) business days' notice of the conference date and time. See the ADRP website for more information.

[1] Form approved by the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

In certain circumstances some or all of your application fee may be refunded if you withdraw your application. See the ADRP website for more information.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name:	Best Bar Pty Ltd
Address:	367 Mandurah Road East Rockingham Western Australia 6168
Type of entity (trade union, corporation, government etc.):	Corporation

2. Contact person for applicant

Full name:	Grant Johnston
Position:	Managing Director
Email address:	Grant.Johnston@bestbar.com.au
Telephone number:	(08) 9411 9353

3. Set out the basis on which the applicant considers it is an interested party

Best Bar Pty Ltd ("Best Bar") is the sole importer of steel reinforcing bar from Singapore, upon which the Minister has imposed anti-dumping measures by virtue of notices published under Section 269TG(1) and (2) of the *Customs Act* 1901 (Cth). Accordingly Best Bar is directly concerned with the importation of the goods subject to the reviewable decision, and is therefore an "interested party" under Section 269ZX of the Act.

4. Is the applicant represented?

Yes.

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☒Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods subject to this application are:

Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.

The goods covered by this application include all steel reinforcing bar meeting the above description of the goods regardless of the particular grade or alloy content or coating.

Goods excluded from this application are plain round bar, stainless steel and reinforcing mesh.

7. Provide the tariff classifications/statistical codes of the imported goods

The goods subject to this application fall within the following statistical codes:

- 7214.20.00 (statistical code 47) - OTHER BARS AND RODS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN FORGED, HOT-ROLLED, HOT DRAWN OR HOT EXTRUDED, BUT INCLUDING THOSE TWISTED AFTER ROLLING: containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling.
- 7228.30.90 (statistical code 40) – OTHER BARS AND RODS OF OTHER ALLOY STEEL, ANGLES, SHAPES AND SECTIONS OF OTHER ALLOY STEEL; HOLLOW DRILL BARS AND RODS OF ALLOY OR NON-ALLOY STEEL: Other, Containing indentations, ribs, grooves or other deformations produced during the rolling process.
- 7213.10.00 (statistical code 42) – BARS AND RODS, HOT-ROLLED, IN IRREGULARLY WOUND COILS, OF IRON OR NON-ALLOY STEEL: Containing indentations, ribs, grooves or other deformations produced during the rolling process.

- 7227.90.90 (statistical code 02) – BARS AND RODS, HOT-ROLLED, IN IRREGULALRLY WOUND COILS, OF OTHER ALLOY STEEL: Other, of circular cross-section measuring less than 14mm in diameter.

- 7227.90.90 (statistical code 04) – BARS AND RODS, HOT-ROLLED, IN IRREGULALRLY WOUND COILS, OF OTHER ALLOY STEEL: Other, other.

- 7227.90.10 (statistical code 69) – BARS AND RODS, HOT-ROLLED, IN IRREGULALRLY WOUND COILS, OF OTHER ALLOY STEEL: Goods, as follows: (a) of high alloy steel; (b) flattened circles and modified rectangles as defined in Note 1(I) to Chapter 72.

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

The relevant anti-dumping notice which explains the reviewable decision is Anti-Dumping Notice No. 2015/133.

9. Provide the date the notice of the reviewable decision was published

The reviewable decision was published on 19 November 2015. A copy of the notice published in accordance with Sections 269TG(1) and (2) is attached as "Attachment A".

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

10. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**

Please refer to Attachment B.

11. **Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.**

Please refer to Attachment B.

12. **Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**
    Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Please refer to Attachment B.

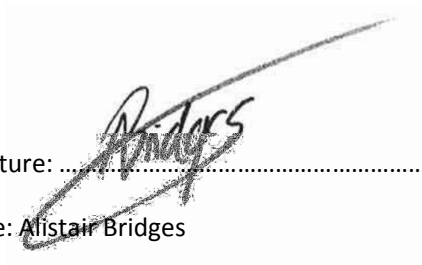
PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant has paid the application fee and attached a copy of proof of payment to this application;

Please refer to Attachment C.

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.



Signature: ……..

Name: Alistair Bridges

Position: Senior Lawyer

Organisation: Moulis Legal

Date: 21/12/2015

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative:	Alistair Bridges
Organisation:	Moulis Legal
Address:	6/2 Brindabella Circuit Brindabella Business Park Canberra International Airport Canberra Australian Capital Territory 2609
Email address:	alistair.bridges@moulislegal.com
Telephone number:	(02) 6163 1000

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

Please refer to Attachment D.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:…….

(Applicant's authorised officer)

Name:

Position:

Organisation

Date: / /

NON-CONFIDENTIAL

ATTACHMENT B

21 December 2015

In the Anti-Dumping Review Panel

Application for review
Steel reinforcing bar exported from Singapore

Best Bar Pty Ltd

1 Grounds upon which the reviewable decision is not the correct or preferable decision

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.[1]

A Introduction

OneSteel Manufacturing Pty Ltd ("OneSteel") applied for a dumping investigation into imports of steel reinforcing bar ("rebar") from the subject countries, including Singapore, by way of an application to that effect dated 4 August 2014. The investigation was initiated on 17 October 2014.

As a result of this investigation, the Parliamentary Secretary to the Minister for Industry, Innovation and Science ("the Parliamentary Secretary") decided on 19 November 2015 to impose dumping duties on rebar exported to Australia from the Republic of Korea, Singapore, Spain and Taiwan. This was effected by the Parliamentary Secretary by the publication of notices in relation to rebar exported from those countries under Section 269TG(1) and (2) of the *Customs Act* 1901 ("the Act").

Best Bar seeks a review of this decision by the ADRP under Sections 269ZZA(1)(a) and 269ZZC of the Act.

Specifically, Best Bar seeks review of a number of findings and conclusions which led to the decision by the Parliamentary Secretary to publish those notices in respect of rebar imported from Singapore. The findings and conclusions concerned, as set out in *Report No. 264 – Alleged Dumping of Steel Reinforcing Bar Exported from the Republic of Korea, Malaysia, Singapore, Spain, Taiwan, The Kingdom of Thailand and the Republic of Turkey* ("Report 264"), are the following:

Finding 1 that rebar from Singapore caused the Australian industry to lose sales volume and market share.

Finding 2 that rebar from Singapore caused the Australian industry to suffer injury in the form of price suppression.

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[1] As per the requirement of Section 269ZZE(2)(b) of the Act, and question 10 of the form approved under Section 269ZY of the Act.

Finding 3 that the volume and prices of imported like goods that were not dumped did not cause injury to the Australian industry.

Finding 4 that it was appropriate to consider the cumulative impact of imports from Singapore with imports from Korea, Spain and Taiwan.

When these findings are reconsidered, it will become apparent that imports of rebar from Singapore did not cause material injury to the Australian industry producing like goods, and that resultantly, there was no basis for the Parliamentary Secretary to make the reviewable decisions under Sections 269TG(1) and (2).

These findings are discussed in greater detail below.

B Finding 1 – that rebar from Singapore caused the Australian industry to lose sales volume and market share

Report 264 concludes that:

> *OneSteel's volume injury predominately resulted from increased dumped imports from Korea, Singapore, Spain and Taiwan (excluding Power Steel) during the investigation period.*[2]

Numerically speaking, this "injury" was said to have taken the form of a 4.3% decrease in sales volume which resulted in a 3.7% decrease in market share.[3] The major factor that was said to support the finding that imports of dumped goods caused this injury appears to be the increase in imports from countries considered to have been dumping. However it does not seem to be the case that the 4.3% loss of sales volume and the related reduction in market share can be found to have been caused by imports from Singapore.

To elaborate – Best Bar was the only importer of Singaporean rebar. Best Bar's primary business is the manufacture of fabricated reinforcing products. Best Bar uses rebar to produce these reinforcing products. Reinforcing products are often fabricated to customer specification – they are not homogenous and are not uniformly priced. These products are sold in a different downstream market to imports of rebar. Best Bar therefore does not compete with OneSteel's sales of rebar. To the extent that

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[2] Page 76.

[3] Pages 75 and 76.

Best Bar could purchase rebar from OneSteel, it would do so at the "wholesale" level, rather than the retail level.

The sales volume and market share analyses in Report 264 include both sales to OneSteel's related distribution companies (OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company) as well as sales to independent distribution customers. The related distribution customers do not source rebar from any source besides OneSteel:

> *The related OneSteel entities sourced their entire supply of rebar from OneSteel…*[4]

What this means is that sales between the Australian industry producing like goods and its related distribution entities, sales that represented a *significant portion* of OneSteel's sales volume (we believe approximately 80%), are not subject to import competition.[5] These entities did not purchase any rebar from any source other than the Australian industry producing like goods, irrespective of the price that may have been offered by import competition.

This fact is of significant relevance to the Commission's consideration of whether imports from Singapore have caused the Australian industry volume injury. Ultimately, to the extent that the reduction in sales volume occurred in relation to OneSteel's sales to its related entities, then it cannot be factually established that the reduction was caused by sales from Singapore, because OneSteel's related distributors cannot and will not source rebar from Singapore, and to the extent that OneSteel's sales to those entities could have been impacted by increased price competition in the non-fabricated rebar market, Best Bar does not sell non-fabricated rebar.[6] Therefore, there is no nexus between imports from Singapore and OneSteel's sales of rebar to its related entities.

As Best Bar noted in its submissions dated 3 June 2015 and 22 September 2015, OneSteel itself has attested to the fact that the reduction in sales volume it suffered occurred in relation to sales to its related entities. In its Annual Report for financial year 2013 the following statement is made:

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[4] *Investigation 264 – Alleged Dumping of Steel Reinforcing Bar Exported from the Republic of Korea, Malaysia, Singapore, Spain, Taiwan, the Kingdom of Thailand and the Republic of Turkey – Visit Report – Australian industry – OneSteel Manufacturing Pty Ltd* ("OneSteel Visit Report"), page 20.

[5] Report 264, page 24.

[6] Details concerning a very small volume of non-fabricated rebar sold by Best Bar is discussed in relation to Finding 2.

> *Sales volumes across Reinforcing were significantly higher compared to the prior financial year due to increased activity levels related to a number of large infrastructure projects.*[7]

It is important to note that the reference to "Reinforcing" is a reference to OneSteel's related distribution entities, OneSteel Reinforcing and the Australian Reinforcing Company.[8] This extract reveals that the high volume of sales that OneSteel – as a group – made in 2012/13 was in sales through its related distributors, who themselves faced higher demand due to a number of large infrastructure projects.

In its own literature, OneSteel assessed its overall sales of reinforcing bar during the period of investigation as follows:

> *Sales volumes of reinforcing bar and mesh improved on the prior financial year, contributing to an overall increase in the sales volumes for Rod and Bar*[9]

Report 264 found that OneSteel's sales volume for rebar fell 4.3% between 2012/13 and 2013/14. Note that the above extract relates to the "Rod and Bar" business, which is the part of OneSteel that produces rebar and sells it wholesale, being the relevant "Australian industry" for the purpose of the investigation.[10] It does not include OneSteel's related fabrication and distribution channels which make sales at the retail level. This suggests that the 4.3% loss in sales volume was the result of OneSteel making less sales to its related distribution entities, because the sales volume of reinforcing bar *increased* at the wholesale "Rod and Bar" level.

Elsewhere in the OneSteel Annual Report, the following is stated:

> *Steel revenue decreased 3% compared to the prior year to $2,875 million due to the impact of lower domestic sales volumes, partly offset by a higher average sales price. Total sales for the year were flat at 2.07 million tonnes, and included increased sales in the wholesale business mainly related to reinforcing and structural products, but lower sales in the retail business.*[11] [underlining added]

Again, the "wholesale business" is OneSteel Manufacturing Pty Limited – the relevant Australian industry in this investigation. The "retail business" is its related entities, which do not form part of the Australian

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7 *Arrium Annual Report 2013*, page 29, which is attached to the *OneSteel's Application for the Publication of Dumping Duty Notices*. For expediency, Arrium's annual reports will be referred to as OneSteel's Annual Reports.

8 *Ibid*. Page 27.

9 OneSteel Annual Report 2014, page 29, which was provided to the Commission during its verification of OneSteel, as explained at page 25 of OneSteel Visit Report.

10 *Ibid.*

11 *Ibid*. Page 8.

industry for the purposes of this investigation. These extracts indicate that in 2012/13, retail sales were high, whereas in 2013/14 – the period of investigation – retail sales had fallen, but wholesale sales of rebar – being those made by the Australian industry directly to the Australian market – had increased.

Recall that OneSteel's related entities only purchase rebar from OneSteel, and that Best Bar does not compete with OneSteel's related entities in sales of rebar that has not been fabricated. If OneSteel sold less rebar in the period of investigation to its related entities than it had in previous years, that loss of sales volume cannot be directly attributed to imports from Singapore. Arguably sales of rebar from other importers compete with sales of rebar from OneSteel's related entities, which could have caused a contraction in those related entities' demand for rebar, resulting in OneSteel making less sales to those entities. However, Best Bar is the only importer of Singaporean rebar. Singaporean rebar therefore does not compete with OneSteel's distribution entities' sales of non-fabricated rebar. The only competitive interaction between Singaporean rebar and OneSteel's rebar is at the "wholesale" level – i.e. in sales made directly by OneSteel to parties other than its related entities. According to OneSteel, its sales of rebar at the wholesale level actually *increased* over the period of investigation.

Accordingly, imports from Singapore cannot have caused the 4.3% decrease in OneSteel's sales volume, nor the related contraction in OneSteel's market share, because OneSteel actually increased its sales at the wholesale point, being the only point of competitive interaction between its sales of rebar and those imported from Singapore.

Despite the above explanation being given to the Commission on two separate occasions, Report 264 fails to analyse where the 4.3% decrease in sales volume occurred – whether in relation to sales from OneSteel to external customers, or sales between OneSteel and its related entities. In light of the above statements from OneSteel's annual reports, it is evident that it was the latter. In light of the fact that OneSteel's related entities cannot purchase rebar from any other source, it is not clear in law, logic or fact how Report 264 can find that the 4.3% decrease in sales volume and related contraction of market share can be attributed to sales from Singapore.

C Finding 2 – that rebar from Singapore caused the Australian industry to suffer injury in the form of price suppression

Report 264 finds that OneSteel has suffered injury in the form of "price suppression", as a result of the dumped import goods. This conclusion is based upon three factors:

- pricing in the Australian rebar market;
- size of the dumping margins; and

- undercutting.

The price undercutting conclusion is really the only pertinent form of "analysis". However, it is entirely unapparent as to how it relates to imports from Singapore.

According to Report 264 the undercutting analysis was undertaken on the basis of *"verified sales data sourced from four cooperating importers and OneSteel as part of the investigation"*.[12] The actual analysis is a comparison of the weighted average selling price of *"goods originating from exporters found to be dumping during the investigation period with OneSteel's weighted average price for rebar coil and rebar straights"*.[13] The outcome of this analysis is shown below:

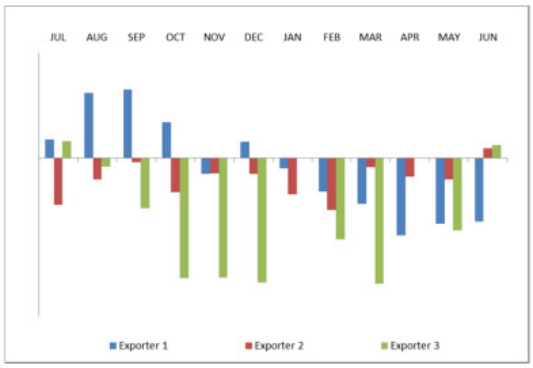

Figure 10 - Undercutting values - importer sales of dumped rebar coils

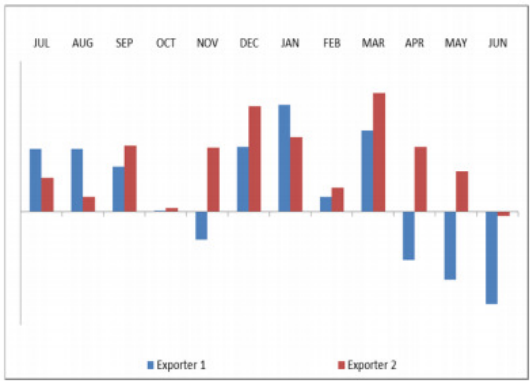

Figure 11 Undercutting values - importer sales of dumped rebar straights[88]

This is described as showing "undercutting" by "importers" in the range of 4.9% above OneSteel's price and 11.5% below OneSteel's price. The titles to each of those graphs confirm that the undercutting

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12 Page 78.

13 *Ibid.*

analysis has been undertaken on the basis of "importer sales of rebar". Although Report 264 states that the analysis covers "exporters in Korea, Spain, Singapore and Taiwan", Best Bar cannot understand how this could be the case for Singaporean rebar. This is because:

- Best Bar is the sole importer of rebar from Singapore.
- Best Bar did not sell rebar in the condition in which it is imported, apart from under one high priced tender contract – rather, Best Bar sold goods fabricated from that rebar.[14]
- Best Bar, an "importer" as per the explanation on the charts, and OneSteel are therefore not competing with each other in the Australian market in relation to the sale of unprocessed rebar.[15]

Potentially, the Commission has used Best Bar's very small volume of sales [CONFIDENTIAL INFORMATION DELETED – volume and market share][16] of non-fabricated rebar to undertake the price undercutting analysis. However, as mentioned to the Commission in Best Bar's submission dated 22 September 2015, the price on those sales was over [CONFIDENTIAL INFORMATION DELETED – price] per tonne. Best Bar gave the Commission information regarding these sales following its importer verification.[17] Best Bar does not consider there is any way in which such high-priced sales could be found to undercut OneSteel's prices.

Based on the express terms of Report 264, we cannot envisage any other form of analysis that could have been undertaken by the Commission to conclude that sales by Best Bar had undercut OneSteel's rebar prices. The Commission would not have used Best Bar's sales of *fabricated* reinforcing products, because such products are not "like" the *non-fabricated* rebar. Nor are reinforcing products homogenous products or priced uniformly. Even if this were not the case, Best Bar does not compete with OneSteel (ie the applicant, OneSteel Manufacturing Pty Limited) in its sales of fabricated products. Rather Best Bar competes with OneSteel's related customers – OneSteel Reinforcing and the Australian Reinforcing Company – which do not form part of the "Australian industry producing like goods". So even if Best Bar's sales of *fabricated* reinforcing product did undercut the prices of OneSteel's related entities for the same product, which has not been alleged or established, that could not be considered

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14 Verification Report, page 16.

15 Confirmed by the Commission at page 72 of Report 264.

16 Report 264, page 24.

17 [CONFIDENTIAL INFORMATION DELETED – pricing evidence]

to be injury to the Australian industry producing like goods, and therefore would not be actionable under Section 269TG(1) and (2) of the Act.

So, the implication that the price undercutting analysis in Report 264 gives credence to the claim that rebar exported from Singapore was involved in such undercutting cannot be correct.

The relevance of the "size of the dumping margins" to the finding that the dumped imports caused price suppression is explained as follows in Report 264 as follows:

> *the magnitude of dumping provided exporters with the ability to offer rebar at lower prices than otherwise would have been the case and forced OneSteel to lower its prices in a price sensitive market.*[18]

There is no analysis provided to support this conclusion. It is merely stated. We question the accuracy of this assumption in light of the findings that price undercutting, presumably the competitive interaction which suppresses OneSteel's prices, was found to have occurred in the range of 4.9% above OneSteel's price and 11.5% below OneSteel's price. In the case of imports from Singapore, the dumping margin was 3%. Hypothetically, if such imports had been found to undercut OneSteel's prices consistently by 11.5 %, then the dumping would only be responsible for 3% of that undercutting, with the remainder begin caused by comparative advantage. Accordingly, OneSteel's prices would still be undercut if there was no dumping. In the absence of dumping, OneSteel would still suffer from price suppression.

With regard to *"pricing in the Australian rebar market*", Report 264 focuses on what is referred to as OneSteel's "*import price parity model*". The Commission compares the relationship between "import offers" and OneSteel's weighted average selling price to two major customers of rebar. On the basis of this analysis, the Commission concludes that the price of imports is a key determinant of OneSteel's selling price. This will be discussed in greater detail in Part D of this application.

In conclusion, Best Bar considers that there is no evidence on record which is capable of showing that Singaporean rebar caused the price suppression found to be suffered by OneSteel, nor the resultant reduced profits and profitability. In fact, as will be discussed in Part D of this application, when imports from other countries are properly considered, it will become apparent that Singaporean rebar is not responsible for the price suppression suffered by OneSteel.

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[18] Page 65.

D Finding 3 - that the volume and prices of imported like goods that were not dumped did not cause injury to the Australian industry

In determining whether dumped imports have caused material injury, the Parliamentary Secretary was required to ensure that any injury caused by factors other than the dumped exports was not attributed to those exports. This requirement is set out in Section 269TAE(2A) of the Act:

> *(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:*
>
> *(a) the volume and prices of imported like goods that are not dumped; or*
>
> *(b) the volume and prices of importations of like goods that are not subsidised; or*
>
> *(c) contractions in demand or changes in patterns of consumption; or*
>
> *(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
>
> *(e) developments in technology; or*
>
> *(f) the export performance and productivity of the Australian industry;*
>
> *and any such injury or hindrance must not be attributed to the exportation of those goods* [our emphasis].

The Commission's analysis in this regard is set out at Section 8.8 of Report 264. Report 264 analyses a number of other factors, including "un-dumped goods", "imports from countries not subject to the investigation" and the "restrictive trade practices of Australian producers". In its conclusion Report 264 states:

> *…the amount of injury suffered by OneSteel can be directly attributable to dumped exports in increased volumes and is reflective of the individual dumping margins.*[19]

Best Bar interprets this as a statement that all injury found to have been suffered by OneSteel was caused by the dumped imports, and not by any other factors.

Respectfully, this position is untenable.

As noted in the Australian industry verification report:

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[19] Page 93.

> *OneSteel advised during the verification visit that it constantly monitors price offerings in the market and that a key determinant for its prices to external customers was the price of imports.*[20]

In Report 264, this is referred to as the "*import price parity*" model. It is abundantly evident that OneSteel bases its prices to external customers, being the minority of OneSteel's customers, on import prices, not just on "dumped" import prices.

In its "non-attribution" consideration, Report 264 considers two different forms of imports - "undumped goods" and goods from countries not subject to the investigation. With regard to the "undumped goods", Report 264 determines that:

- Although imports from Turkey, Malaysia and Thailand increased in the investigation period by over 16%, on a country by country basis imports from Malaysia and Thailand fell, whereas imports from Turkey increased.[21]

- Turkish prices did not undercut OneSteel's quarterly average weighted pricing until the final quarter of the investigation period. Over the whole investigation period the weighted average price for rebar straights from Turkey only undercut OneSteel's pricing for rebar by approximately 1%.[22]

In relation to goods from countries not subject to the investigation, Report 264 states:

- 17% of the imports of rebar into Australia came from countries not subject to the investigation – of which 11% originated in New Zealand and 6% originated from other countries.[23] [24]

- During the investigation period, such imports had 6% share of the total Australian market.[25]

- That these import volumes were insufficient to have material influence on prices of rebar.[26]

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20 Page 45.

21 Page 88.

22 Page 88.

23 Page 61.

24 Page 88.

25 Page 63.

26 Page 88.

Firstly, it is unclear why these two forms of "imported like goods that are not dumped" – those under investigation, and those not - were analysed separately. Section 269TAE(2A) of the Act requires that the Minister consider *"the volume and prices of imported like goods that are not dumped".* The above analysis does not achieve that.

In terms of volume, Best Bar notes that imports from the countries subject to the investigation were found not to be dumped (or not to have been dumped injuriously) comprised 5% of the market during the period of investigation. This means that, collectively, the volume of imported like goods that were not dumped was 11% during the period of investigation. We would submit that this volume cannot be considered to be "immaterial", in terms of it being another factor causing injury.

We also note that Report 264 reveals that *"on a proportional basis, imports from countries identified to be dumping were approximately 4.5 times greater than those considered not to be dumping the investigation period".*[27] The reference to countries considered not to be dumping is a reference to the countries that were originally subject to the investigation, but were found not to be dumping, or not to be dumping injuriously, being Turkey, Malaysia and Thailand. Import volume and market share are linked, in the sense that a percentage of market share is just the import volume of the relevant countries divided by the total volume of rebar sold in Australia. Therefore, if the import volume of dumped goods is 4.5 times greater than non-dumped goods, so too will be the market share. Accordingly, as Turkey, Malaysia and Thailand were considered to hold 5% of the market share, dumped imports must have held 22.5% of the Australian market. Accordingly, the total volume of *"imported like goods that are not dumped"* was approximately one third of all imported goods, and approximately half the volume of the dumped goods. Again, this is not insignificant. The volume of this non-dumped imported rebar should have been considered in accordance with Section 269TAE(2A)(a) of the Act.

However, Report 264's major failure is in its consideration of the *"prices of imported like goods that are not dumped".* In this regard Report 264 only considers the price of rebar from Turkey, and not the price of rebar from any other source. As well as ignoring the express requirements in Section 269TAE(2A), this is problematic, because it ignores much of the logic as to why the Commission has found that dumped imports have caused injury. For example, Report 264 states the following:

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[27] Page 62.

> *The Commission considers that rebar is a commodity like product, which means that the grades and sizes used in the market are commonly available and are interchangeable regardless of origin. As a result, price is one of the primary factors affecting purchasing decisions.*
>
> *OneSteel stated that it negotiates monthly prices for rebar with customers, based on the delivered price of the imported products in the month that the imports are due to arrive at the customer's facility. The Commission accept that as customers can purchase either from OneSteel or from an import supply source, import offers and movement in the price of import offers are used by customers to negotiate prices with OneSteel, and as such, in order to remain competitive, OneSteel is obliged to respond to the price of imported products.*[28]

These factors are equally applicable to imports of like goods that are not dumped. OneSteel presumably undertakes an analysis of all import offers when determining its prices, because, in order to remain competitive, OneSteel would be "obliged to respond" to the prices of all import products, including those that are not dumped. This must be the case, because OneSteel initiated the investigation against Turkey, Malaysia and Thailand, and therefore must have considered that they contributed to its injury. Additionally, there is no evidence that the "volume" of the imports is a relevant consideration in OneSteel's pricing logic – it is merely that OneSteel needs to respond to low prices in order to maintain market share.

Based on its knowledge of the market, Best Bar would be surprised if import prices from Singapore were not the highest, and even more so if they were the lowest. In this regard, we note the following statement in Report 264:

> *…the Commission has identified that Natsteel prices were lower than prices over a three month period for two of the other countries in this period (pricing for the third country was not available for this period). On this basis, the Commission concludes that for certain months of the investigation period, Natsteel's prices were not higher than exporters found not to be dumping.*[29]

The reference to NatSteel is a reference to Best Bar's Singaporean exporter. The *"countries"* referred to in the above extract were Malaysia, Turkey and Thailand. It is apparent that the Commission has undertaken some price comparison between those countries – which has been found not to have dumped – and Singapore, and has determined that prices from Singapore were only below those other prices in three months out of the 12 month period.

Best Bar is surprised by this, but notes:

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28 Page 77.

29 Page 85.

- Firstly, that this is a comparison between Singapore's export prices and goods not found to have been dumped – presumably highlighting the fact that Singapore export prices were at all times the highest prices amongst the exports from those countries found to have been engaged in dumping.

- Secondly, this means that for nine months of the twelve month investigation period, prices from Singapore were higher than prices from the countries found not to be dumped.

Insofar as import prices are said to "suppress" OneSteel's price and thus cause it damage, OneSteel would have been caused damage irrespective of whether goods were imported from Singapore or not. Moreover, it is not only the prices of the like goods from the countries for which the investigation was terminated which are relevant to the "price suppression" found to be suffered by OneSteel, but rather, the prices of all imports. Best Bar believes that the price it pays for rebar from Singapore were generally higher than the prices from other import sources. Accordingly, Best Bar cannot see how its imports could have been found to have caused any form of injury to the Australian industry.[30]

In conclusion, Best Bar submits that the Commission failed to take proper account of the value and volume of non-dumped exports of rebar, as is required under Section 269TAE(2A)(a). In so failing, the Commission has attributed price suppression to imports from Singapore, in circumstances where its prices were higher than non-dumped imports at most relevant times, and higher than all other dumped imports.

E Finding 4 - that it was appropriate to consider the cumulative impact of imports from Singapore with imports from Korea, Spain and Taiwan

Report 264 considers injury caused to OneSteel by imports from Korea, Spain, Taiwan and Singapore on a cumulative basis. This is permissible under the Act in accordance with Section 269TAE(2C), which provides:

> *(2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:*
>
> *…*

[30] In so far as the Review Panel might be concerned to know why "cumulation" (of Singaporean exports with other "dumped" exports) might not have extended the reach of the Commission to exports from Singapore for the purposes of its injury finding, please see E below.

> *(e) it is appropriate to consider the cumulative effect of those exportations, having regard to:*
>
> > *(i) the conditions of competition between those goods; and*
> >
> > *(ii) the conditions of competition between those goods and like goods that are domestically produced.*

It is important to note that adopting a cumulative approach to the injury determination does not occur as a matter of course. It may only be done where the conditions of competition between the exported goods and the conditions of competition between the exported goods and the domestically produced goods are such that it is "appropriate" to consider the cumulative effect of the relevant exportations. Evidently, Report 264 considered it to be appropriate to do so. This was based on three different factors, being that *"the conditions of competition between imported and domestically produced reinforcing steel are similar"*, *"price sensitivity"* and *"substitutability of the imported and domestically produced goods"*.

With regard to the conditions of competition, Report 264 states:

> *Overall, the conditions of competition between imported and domestically produced reinforcing steel bar are similar. The Commission has established that importers (traders/distributors), some exporters and OneSteel were selling rebar predominantly into the same market segment during the investigation period. This has been verified during importer, exporter and Australian industry visits.* [31]

A simplistic finding that there are similar conditions of competition between the relevant exports and domestically sold products does not necessarily justify any conclusion that those conditions of competition make it appropriate to cumulate the impact of the exports. However we again point out that the conditions of competition in so far as they relate to exports from Singapore were indeed hugely different to those that pertained to the other imports during the period of investigation. Best Bar, the sole importer of Singaporean rebar, did not sell *rebar* at all. Thus it did not sell rebar into the same market segments as did the other exporters and OneSteel. Best Bar sells *fabricated reinforcing products* into a downstream market.

To the extent that there may be competition between OneSteel and imports from Singapore, this competition occurs at the wholesale level at which, as discussed, OneSteel has not lost any sales volume or market share.

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[31] Page 73.

In relation to "price sensitivity", Report 264 states:

> *The Commission considers that rebar is a commodity like product and, due to the degree of price sensitivity in the rebar market, price competition is a major condition of competition between the imported goods and the imported goods and the domestically produced goods. The Commission analysed the verified weighted average selling price of rebar sold by OneSteel and visited importers of goods from the nominated countries during the investigation period. Based on verified data, the Commission found that there was significant price competition between imported goods and also between the imported goods and the like domestic goods.* [32]

Again, it is not apparent why the simplistic finding that there is "price competition" would make it appropriate to cumulate the effect of the exports. However that may be, the facts pertaining to Best Bar were again highly differentiated to those of the other importers. The Commission determined that Singaporean rebar was overwhelmingly higher priced than rebar from the countries that were investigated and that was found not to be dumped. It seems that between there was a layer, or "blanket" if you like, of non-dumped exports lying between the prices of the dumped exports and the higher prices of rebar from Singapore. In our submission that would evidently break any competitive nexus between exports from Singapore and the dumped exports. The situation appears to us to have been definitely *unsuited* to cumulation in so far as exports from Singapore were concerned.

With regard to the substitutability of the imported and domestic goods, Report 264 states:

> *Furthermore, domestically produced and imported rebar can be directly substituted. The goods produced by all exporters and the Australian industry are alike, have similar specifications and common end-uses*
>
> *Evidence indicates that the importers' customers and in some circumstances exporters are directly competing with OneSteel's distribution network. It was observed that some importers were importing rebar from multiple countries and that customers were purchasing rebar from Australian industry and rebar sourced from exporters participating in this investigation.*[33]

Firstly, this appears to be a restatement of the finding that the exported goods and the domestically produced goods are "like goods". That will be the case in anti-dumping investigation. If they were not like goods, then no investigation would be initiated.

The reference to OneSteel's distribution network, by which we take it the Commission means OneSteel Reinforcing and the Australian Reinforcing Company, is confusing, because these entities do not form

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32 *Ibid.*

33 Page 74.

part of the Australian industry producing like goods. In any regard, the only competition between Singaporean rebar and OneSteel's distribution network was through Best Bar's sales of fabricated reinforcing products in the downstream market. These products were not under investigation. Therefore, we do not see how this could establish the appropriateness of cumulating the impact of exported rebar from Singapore along with rebar from the other countries subject to this investigation.

Essentially, all the Report 264 has done is to find that (a) the goods are rebar and (b) that rebar competes with other rebar in the Australian market.

Best Bar's submission of 22 September 2015 explained that the above analysis, which was also made in SEF 264, was not suited to the facts as they pertained to exportations of rebar from Singapore. To summarise, this was said because of the following matters:

- Singaporean rebar was sold only to Best Bar.
- Best Bar did not on-sell non-fabricated rebar to other entities[34] - therefore Singaporean rebar did not compete directly with OneSteel's sales of rebar, or with OneSteel's related distribution entities, or with other exported rebar, in the Australian rebar market.
- Unlike other importers, Best Bar's primary activity involves further processing of rebar and the sales of that fabricated rebar in the downstream market. As such, Singaporean rebar competes directly with OneSteel's related distributors in that downstream fabricated reinforcing product market. Irrespective of the legitimacy of OneSteel selling rebar at a lower price to its related customers, the very fact that this price difference exists is a significant disincentive to the purchase of rebar from OneSteel because it prevents Best Bar from being able to compete against those entities in the downstream market.[35]
- While Best Bar has in the past purchased rebar from OneSteel, during the period of investigation the prices that OneSteel offered Best Bar increased significantly over the period just prior to the period of investigation, to such a degree that it would have effectively locked Best Bar out of the downstream fabricated market, rendering Best Bar unable to compete with fabricated

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34 With the exception of the very small volumes discussed in Part B of this application.

35 The existence of this price differential is stated at page 66 of Report 264.

reinforcing steel products produced both from imported rebar and from OneSteel's own rebar in the downstream market.[36]

- Best Bar purchased rebar directly from OneSteel, and was therefore a "wholesale" customer. As mentioned above, OneSteel has stated that the loss of sales it suffered during the period of investigation occurred at the retail level. At the wholesale level, sales volumes increased. Therefore, to the extent that OneSteel competes with imports from Singapore, it is apparent that such imports did not cause material injury to the Australian industry.[37]

In this regard, all that Report 264 states is that:

> *Best Bar contended that it was the only importer that operated as a fabricator. However, the Commission's enquiries have identified that exporters in two of the other three countries identified as dumping sold rebar to other fabricators or processors of rebar.*[38]

And that:

> *A pricing analysis was provided by OneSteel identifying pricing to various customers, including Best Bar. OneSteel's pricing lists were provided by Best Bar during a verification visit. The Commission's analysis of the information provided by the parties identified that pricing to Best Bar was consistent with the Commission's analysis of pricing between OneSteel's related and unrelated customers, but on a weighted average basis the differences were less than weighted average differences identified for all unrelated customers.*[39]

With regard to other fabricators operating in the Australian market, Best Bar notes that there were only four cooperative importers – Stemcor Australia Pty Ltd, Commercial Metals Australia Pty Ltd, Sanwa and Best Bar. To Best Bar's knowledge, none of the other cooperative importers have the capacity to fabricate reinforcing products from rebar. This conclusion appears to be supported by the non-confidential visit reports for each of those importers. It is important to recall that Report 264 only uses data from those cooperative importers to ascertain whether price undercutting occurred. As we have stated, that price undercutting analysis does not seem relevant to imports of rebar from Singapore, because it focuses on sales of rebar by importers. Best Bar, as the importer of rebar from Singapore, did not sell rebar in the Australian market. As we have tried to explain to the Commission, and as we now are explaining to the ADRP, Best Bar sold *fabricated rebar* in the Australian market.

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37 This is discussed in greater detail in Best Bar's submissions dated 3 July 2015 and 12 June 2015.

38 Page 72.

39 Page 73.

In relation to price, the above extract confirms that the OneSteel's prices to related customers were less than the prices it offered to Best Bar. Irrespective of the legitimacy of OneSteel's pricing to its related entities, this put Best Bar in a difficult position, in the sense that its primary source of competition in the downstream fabricated market was (and is) OneSteel's related entities. This price differential – and the full knowledge that "OneSteel" has of the prices paid by Best Bar – put Best Bar at a huge competitive disadvantage with regard to its operations in the downstream fabricated market.

Section 269TAE(2C) only allows for cumulation of the effect of imports where the relevant conditions of competition make it "appropriate" to do so. Best Bar submits that in the circumstances of this case it was not appropriate to cumulate the effect of the imports from Singapore with the imports from Korea, Spain and Taiwan because, in doing so, the Commission has attributed injury caused by an increase in imports from those countries and Singapore, in circumstances where the volume and price of imports from Singapore cannot have caused the injury complained of. Again, we recall that:

- It is patently clear from OneSteel's annual reports that the loss of sales volume occurred in relation to sales by OneSteel's related distribution entities. These are retail sales, not wholesale sales, which is the level at which sales to Best Bar would have been made. Thus the 4.6% loss of sales volume identified cannot be attributed to imports from Singapore.

- It is not apparent how the price undercutting that was found to exist could be attributed to exports from Singapore, as rebar from Singapore was not sold in the form in which it was imported.[40]

- It is not apparent how price suppression can be attributed to imports from Singapore because, according to the Commission, such imports were generally higher priced than non-dumped imports and, Best Bar believes, higher priced than other import sources, whether dumped or not.

Accordingly, Best Bar considers it was not the correct or preferable decision that the impact of imports from Singapore should have been assessed cumulatively with imports from Korea, Spain and Taiwan.

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[40] With the exception of the very small volumes discussed in Part B of this application.

2 The proposed correct and preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.[41]

Best Bar proposes that the correct and preferable decision was that imports of rebar from Singapore did not cause the Australian industry material injury. The injury found to be suffered by the Australian industry was in the form of:

- loss of sales volume;
- loss of market share;
- price suppression; and
- reduced profits and profitability.

The loss of sales volume did not occur in relation to OneSteel's "wholesale" sales – such as those it made to Best Bar, but in relation to retail sales. Therefore the 4.6% loss of sales volume and the 3.7% loss of market share cannot be attributed to imports from Singapore.

Similarly, the price undercutting identified as causing price suppression cannot be linked to imports from Singapore. Indeed, the price suppression generally will be caused by all forms of import competition – whether or not those imports are dumped. As imports from Singapore were generally higher priced than imports from the countries for which the investigation was terminated, and higher priced than other sources of rebar, it cannot be the case that these imports were causing the price suppression complained of.

Ultimately, it was only through the incorrect cumulation of the impact of other imports with imports from Singapore that caused injury to the Australian industry producing like goods. This incorrect attribution of injury evidences that the cumulation of the impact of imports from Singapore was not "appropriate" as is required by Section 269TAE(2C).

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[41] As per the requirement of Section 269ZZE(2)(b) of the Act, and question 11 of the form approved under Section 269ZY of the Act.

In light of the above, it is apparent that imports from Singapore have not caused the injury complained of. Accordingly, the requirements for the publication of dumping notices under Section 269TG(1)(b)(i) and (ii) and 269TG(2)(b) of the Act has not been met with regard to Singaporean exports. Therefore, the Minister should not have decided that there was no basis to publish notices under those Sections.

3 Difference between the reviewable decision and the proposed decision

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision[42]

The proposed decision is different from the reviewable decision, because the reviewable decision was the decision to publish notices under Sections 269TG(1) and 269TG(2) of the Act, whereas the proposed decision is a decision that the grounds for publication of such notices did not exist. Specifically, there is no basis to find that material injury was being caused or threatened to an Australian industry producing like goods because of dumped exports of rebar from Singapore.

Accordingly, the proposed decision is materially different from the reviewable decision, because the reviewable decision is a decision to publish notices under Section 269TG(1) and (2) whereas the proposed decision is a decision not to publish notices under Section 269TG(1) and (2).

Lodged for and on behalf of Best Bar Pty Limited by:

Alistair Bridges
Senior Lawyer

Moulis Legal

[42] As per the requirement of Section 269ZZE(2)(b) of the Act, and question 12 of the form approved under Section 269ZY of the Act.