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5 February 2016

Miss J Fitzhenry
Acting Senior Member
Anti-Dumping Review Panel
c/- Legal, Audit and Assurance Branch
Department of Industry, Innovation and Science
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By email

Dear Senior Member

Review of Ministerial decision – steel reinforcing bar
Interested party submission of NatSteel Holdings Pte Ltd

We represent NatSteel Holdings Pte Ltd ("NatSteel") in this matter.

This submission is made on behalf of NatSteel in accordance with Section 269ZZJ of the *Customs Act* 1901 (Cth) ("the Act"). NatSteel is a manufacturer and exporter of steel reinforcing bar ("rebar") from Singapore, and is, accordingly, an interested party for the purposes of this review as per Sections 269ZX(c) and (d) of the Act.

In an application dated 18 December 2015, OneSteel Manufacturing Pty Ltd ("OneSteel") alleges that the Parliamentary Secretary to the Minister for Industry, Innovation and Science ("the Parliamentary Secretary") erred in her consideration of NatSteel's dumping margin. This review was been initiated in part on the basis of that application, and is considering the following findings that relate to NatSteel:

- *The Parliamentary Secretary cannot reasonably find that the information supplied by the exporter, NatSteel Holdings Pte Ltd is reliable within the meaning of subsection 269TAC(7) of the Act;*

- *The Parliamentary Secretary, has erred in her determination of the normal value under paragraph 269TAC(2)(c) of the Act by accounting for a "normalisation adjustment" to the exporter, NatSteel's, cost of production or manufacture of Rebar in the country of export.*

- *The Parliamentary Secretary has erred in working out an amount to be the profit on the sale of goods for the purposes of subparagraph 269TAC(2)(c)(ii) of the Act and under paragraph (a) of subregulation 45(3) of the Customs (International Obligations) Regulation 2015.*

NatSteel will address the lack of merit to each of those grounds of review in this submission. Additionally, NatSteel will provide its views regarding the review of the finding that imports from Singapore caused material injury to OneSteel, which have been raised in the application for review submitted by Best Bar Pty Ltd ("Best Bar"), *viz*:

- *Imports of Rebar from Singapore did not cause material injury to the Australian industry producing like goods, and so there was no basis for the Parliamentary Secretary to make the Reviewable Decision.*

A NatSteel's normal value was based on reliable information

At Section 10.1 of OneSteel's application, OneSteel alleges that NatSteel's information is not "reliable" within the meaning of Section 269TAC(7) of the Act.

Firstly, NatSteel rejects outright the proposition that its record were unreliable. The allegations made by OneSteel in that regard are baseless. NatSteel provided a completed Exporter Questionnaire response to the Commission on 12 December 2014. NatSteel's records were then verified by staff of the Anti-Dumping Commission ("the Commission") over a four day period. There has never been any question as to the probity or reliability of the information provided by NatSteel.

To a degree, it appears that OneSteel has attempted to expand upon the scope of its grounds for review at Sections 11.1 to 11.4, of its application. Specifically, it states that the Parliamentary Secretary:

> *11.1 ought not to be satisfied that the exporter, Natsteel's, costs of production or manufacture of the goods in Singapore are reliable;*
> *11.2 ought not use the records of the exporter, NatSteel, to work out the amount of cost of production or manufacture of the goods in Singapore by using the information set out in the records;*
> *11.3 ought to be satisfied that sufficient information has not been furnished or is not available to enable normal value of goods to be ascertained under subsection 269TAC(2)(c)*
> *11.4 ought to determine, the normal value of like goods having regard to all relevant information pursuant to subsection 269TAC(6), which includes the information contained in the original application for the publication of a dumping duty notice.*

Essentially, OneSteel is attempting to manufacture a circumstance where the normal value applicable to NatSteel's exports is determined without reference to NatSteel's verified information. OneSteel's submission is either that NatSteel's records are unreliable and must be disregarded under Section 269TAC(7), or/and that there is not sufficient information available to the Parliamentary Secretary to allow for a determination of normal value under Section 269TAC(1) and 269TAC(2) of the Act. Neither of these positions are correct.

To understand why, we must consider the actual operation of Sections 269TAC(6) and (7). Clearly, these Sections only relate to information which is relevant to the determination of a normal value. This is expressly stated in the case of Section 269TAC(6), and is evident in Section 269TAC(7) in that it states that it operates for *the purpose of* Section 269TAC as a whole. As per Section 269TAC(1), Section 269TAC expressly relates to the determination of the *normal value of goods exported to Australia*. Therefore, Section 269TAC(7) will only operate to allow the Parliamentary Secretary to disregard information that relates to normal values, where that information is "unreliable". Again, NatSteel does not consider there is any basis upon which its records can be considered to be "unreliable".

NatSteel's normal value was based on Section 269TAC(2)(c), in accordance with which it was calculated as being the sum of:

> *(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
>
> *(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export -- such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale…*

The reference in Section 269TAC(2)(c)(i) to the "goods" is a reference to the goods exported to Australia. This is because Section 269TAC is focussed on calculating a normal value for any goods exported to Australia, as per Section 269TAC(1). This has been accepted by the Commission, and is reflected in the *Dumping and Subsidy Manual* which states:

> *Section 269TAC(2)(c) requires the determination of the cost of production or manufacture of the goods (i.e. the goods exported to Australia) in the country of export.*[1]

NatSteel's normal value was calculated on this basis – using the cost to make the goods exported to Australia, plus the administrative, selling and general costs and profit associated with domestic sales.[2]

OneSteel alleges that the Parliamentary Secretary could not determine the cost of goods – being the cost to make the exported rebar under Section 269TAC(2)(c)(i) ("Export CTM") – because, it alleges, NatSteel's records did not meet the requirements of Regulation 43 of the Customs (International Obligations) Regulations 2015. Specifically, OneSteel does not consider that NatSteel's records "relate to the like goods" or "reasonably reflect competitive market costs associated with the production or manufacture of like goods". These allegations are based upon NatSteel's inability to distinguish between rebar it imported for sale in the domestic market, and rebar that it produced for sale in the domestic market.

While NatSteel's accounting system does not differentiate between the imported and self-produced goods that are sold domestically, it does differentiate between the goods that are sold domestically (irrespective of origin), and those that are sold to Australia. As confirmed in the *Investigation into the Alleged Dumping of Steel Reinforcing Bar Exported from the Republic of Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and the Republic of Turkey – Exporter Visit Report – NatSteel Holdings Pte. Ltd* ("Visit Report"), all goods exported to Australia were manufactured by NatSteel:

> *[CONFIDENTIAL TEXT DELETED – information concerning imports of goods]*[3]

What this means, is that the imports have no effect on the Export CTM. As stated in response to Questions G-5(1) of NatSteel's Exporter Questionnaire response, which requires NatSteel to list cost differences between the goods sold on the domestic market and the goods exported:

> *[CONFIDENTIAL TEXT DELETED – cost recording methods]*[4]

Therefore, the imported rebar that NatSteel sold domestically has no impact on its export sales or the costs associated with those sales. Again, this is confirmed by the Commission in the Visit Report:

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1 Anti-Dumping Commission, *Dumping and Subsidy Manual*, page 40. See http://www.adcommission.gov.au/accessadsystem/Pages/Dumping-and-Subsidy-Manual.aspx

2 Report 264, page 34.

3 Visit Report, page 18.

4 NatSteel Holdings Pte Ltd, *Exporter Questionnaire* response, page 50.

> *We consider that information gathered and detailed in this report and its attachments can be relied upon to establish constructed normal values for comparison with export prices for rebar exported to Australia during the investigation period under s. 269TAC(2)(c).*[5]

And again in Report 264, in response to OneSteel making substantively the same argument to the Commission that it now makes to the ADRP, the Commission states:

> *In relation to OneSteel's contention that Natsteel's cost data is unreliable and cannot be used for the purposes of constructing normal values, the Commission reaffirms the findings detailed in Natsteel's visit report. Specifically, the Commission notes that whilst Natsteel was unable to differentiate in its accounting system which domestic sales involved imported or self-manufactured rebar, the Commission was satisfied, pursuant to subsection 43(2) of the Regulations, that the cost information gathered at the verification visit reasonably reflected competitive market costs associated with the manufacture of like goods and could therefore be relied upon to establish constructed normal values for comparison with export prices. The Commission was further satisfied that Natsteel's SG&A expenses were appropriately allocated.*[6]

Accordingly, the grounds that OneSteel has raised to argue that NatSteel's Export CTM did not meet the standards of Regulation 43(2) are factually incorrect. The importation of rebar and its sale domestically within Singapore has no impact on NatSteel's Export CTM. The Export CTM is the basis for the constructed normal value calculated by the Parliamentary Secretary under Section 269TAC(2). The Commission verified NatSteel's Export CTM and confirmed that it met the standards of Regulation 43(2). Nothing stated in OneSteel's application detracts from that finding.[7]

The allegation that NatSteel's Export CTM was "unreliable" for the purpose of Section 269TAC(7) cannot be supported. The Parliamentary Secretary had before her information to determine normal values in accordance with Section 269TAC(2), so there is no requirement for the Parliamentary Secretary to rely upon Section 269TAC(6) to establish NatSteel's normal value. In fact, to do so would be in breach of the obligation on the Parliamentary Secretary to use NatSteel's records where they meet the requirements of Regulation 43(2).

The decisions that OneSteel proposes at 11.1 to 11.4 of its application are not correct, are not preferable, and if implemented would be manifestly unjust.

B The profit applied to NatSteel's constructed normal value was correct and preferable

At Section 10.3 of OneSteel's application, OneSteel alleges that the Parliamentary Secretary erred in determining a profit to be included in the constructed normal value using the methodology specified

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5 Visit Report, page 33.

6 Report 264, page 36.

7 As an aside, NatSteel does not consider that there is a basis to consider that domestic cost to make does not meet the standards set by Regulation 43(2). The definition of "Like Goods" in Section 269T does not specify that the goods need to be produced in the country of export. Indeed, at page 11 of the Confidential Version of NatSteel's Visit Report the Commission confirmed that *all rebar sold by NatSteel* [were] *of like goods* for the purposes of the investigation. Accordingly, NatSteel's records regarding domestic sales did *relate* to *the like goods* as required by Regulation 43(2)(a). As discussed elsewhere, the Commission confirmed that NatSteel's records - including those related to domestic sales - are kept in accordance with the generally accepted accounting principles applicable to Singapore, as required by Regulation 43(2)(b)(i). Finally, we note that Regulation 43(2)(b)(ii) requires the records to *reasonably reflect the competitive market costs associated with the production or manufacture of like goods.* There is no requirement that the records only relate to the *competitive market costs of production or manufacture*, rather, they only need to *reasonably reflect* those costs. There has not been any suggestion, and neither the Commission nor OneSteel have provided any serious challenge to the conclusion that that NatSteel's records relating to domestic costs did reasonably reflect the competitive market costs associated with production or manufacture in Singapore.

under Regulation 45(3)(a). At Section 11.6, OneSteel states that the correct and preferable decision would be that the Parliamentary Secretary:

> *11.6 ought to work out any amount to be the profit on the sale of goods by NatSteel for the purpose of determining the normal under paragraph (c) of subregulation 45(3)…*

Regulation 45 sets out how the Parliamentary Secretary is to work out the profit to be used in constructing a normal value. That Regulation provides:

> *(1) For subsection 269TAC(5B) of the Act, this section sets out:*
>
> *(a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the amount) to be the profit on the sale of goods; and*
>
> *(b) factors that the Minister must take account of for that purpose.*
>
> *(2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.*
>
> *(3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:*
>
> *(a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or*
>
> *(b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or*
>
> *(c) using any other reasonable method and having regard to all relevant information.*
>
> *(4) However, if:*
>
> *(a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and*
>
> *(b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;*
>
> *the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.*

Essentially, in the circumstances in which a profit under Regulation 45(2) ("OCOT Profit") cannot be adopted, the Parliamentary Secretary can choose from one of three different profit methodologies, Regulation 45(3)(a) ("General Category Profit"), Regulation 45(3)(b) ("Other Exporter Profit") and Regulation 45(3)(c) ("Other Reasonable Method Profit").

The Commission could not calculate an OCOT Profit because Natsteel was unable to identify exactly which domestic sales involved imported or self-manufactured rebar, and therefore the Commission was unable to determine the exact volume of goods sold in the ordinary course of trade.[8] As a result, Report 264 had to apply one of the three profit methodologies under Regulation 45(3). Specifically, in Report 264, a General Category Profit of [CONFIDENTIAL TEXT DELETED – number]% was calculated, on the basis of:

> *…the actual profits realised by Natsteel by comparing the verified domestic selling prices of its rebar, regardless of whether it was imported or manufactured, to the verified cost to make*

[8] Visit Report, page 36.

> *and sell (CTMS) of self-manufactured rebar which, as detailed above, reasonably reflect competitive market costs. In this instance, the Commission considers that all domestic sales of rebar, whether imported or self-manufactured, can be included in the same general category of goods, because Natsteel's pricing strategy, as detailed in the Natsteel visit report, is the same for both imported and self-manufactured rebar.*[9]

OneSteel's contention is that the Parliamentary Secretary should use an Other Reasonable Method Profit, instead of the General Category Profit.

NatSteel's understands that an Other Reasonable Method Profit was not used because NatSteel is the only producer and/or manufacturer of rebar in Singapore,[10] which prevented the Commission from calculating a "*profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export"* for the purposes of Regulation 43(4)(b). Without being able to calculate this amount, the Commission could not apply the "cap" that is instituted by Regulation 43(4).

OneSteel argues that Other Reasonable Method Profit can be used if no Regulation 45(4) cap can be calculated. In doing so, OneSteel is advocating that there be no limitation to the discretion to select a profit using the Other Reasonable Method Profit methodology where there is only a single producer/manufacturer of the subject goods in the relevant country of export. This position is not consistent with the terms of the Regulation. The Regulation requires that the Parliamentary Secretary *must* disregard the amount by which the amount of profit determined exceeds the cap. To consider that this obligation is not required to be met in circumstances where there is a single producer/ manufacturer in the country of export would mean that the usage of the Other Reasonable Method Profit in those circumstances would be significantly, and arbitrarily different than in circumstances where there was more than one producer/manufacturer in the country of export.

The Commission's stated policy with regard to the usage of the Other Reasonable Method Profit is:

> *Regulation 45(3)(c), which provides for any other reasonable method, caps the profit that may be added. That cap is described in Regulation 45(4) – the profit added must not exceed the profit normally realised by other exporters on domestic sales of the same general category of goods. The Commission will not apply this provision if it is unable to determine the capped amount. The Commission will consider claims that a profit rate to be added may not be one that is 'normally realised' on the domestic market by the exporters in question.*[11]

The Commission's policy is consistent with WTO jurisprudence regarding the purpose of the "cap". Regulation 45 is Australia's legislative implementation of the rules in Article 2.2.2 of the *Anti-Dumping Agreement* – rules which Australia is obligated to follow – setting out how a "reasonable amount" of profit and of selling, general and administrative costs are to be determined in order to construct normal values. Like Regulation 45(3)(c), Article 2.2.2(iii) allows an investigating authority to determine profit using *"any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin".*

The WTO's Dispute Settlement Body has provided guidance as to the force and effect of this cap for *"reasonable method"* profit. For example in *EC- Bed Linen* the Panel made the following statements:

> *Further, we note that Article 2.2.2(iii) provides for the use of 'any other reasonable method', without specifying such method, subject to a cap, defined as 'the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin'. To us, the inclusion of a cap where the methodology is not defined indicates that where the methodology is defined, in*

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9 Report 264, page 64.
10 Report 264, page 35.
11 Dumping and Subsidy Manual, page 49.

> *subparagraphs (i) and (ii), the application of those methodologies yields reasonable results. If those methodologies did not yield reasonable results, presumably the drafters would have included some explicit constraint on the results, as they did for subparagraph (iii).*
>
> *Thus, we conclude that the text indicates that, if a Member bases its calculations on either the chapeau or paragraphs (i) or (ii), there is no need to separately consider the reasonability of the profit rate against some benchmark. In particular, there is no need to consider the limitation set out in paragraph (iii). That limitation is triggered only when a Member does not apply one of the methods set out in the chapeau or paragraphs (i) and (ii) of Article 2.2.2. Indeed, it is arguably precisely because no specific method is outlined in paragraph (iii) that the limitation on the profit rate exists in that provision.*[12]

Subparagraphs 2.2.2(i) and 2.2.2(ii) of the *Anti-Dumping Agreement* are implemented in Australian law as Regulations 45(3)(a), in respect of General Category Profit, and (b) in respect of Other Exporter Profit. The Panel reasons that these two methods will calculate a "reasonable profit". However, the Panel is of the view that the Other Reasonable Method Profit method is subject to the "cap" in order to ensure that the profit adopted is "reasonable". According to the Panel then, the failure to apply a cap to Other Reasonable Method Profit risks the possibility that the profit identified is not a "reasonable profit".

This understanding was also stated by the Panel in *Thailand - H-Beams*:

> *We note also the requirement in the chapeau of Article 2.2.2 as well as in subparagraphs (i) and (ii) that actual data be used. In our view, the notion of a separate reasonability test is both illogical and superfluous where the Agreement requires the use of specific types of actual data. That is, where actual data are used and the other requirements of the relevant provision (s) are fulfilled (e.g., that the 'same general category of products' is defined in a permissible way where 2.2.2(i) is applied), a correct or accurate result is obtained, and the requirement to use actual data is itself the mechanism that ensures reasonability in the sense of Article 2.2 of that (correct) result. By contrast, under subparagraph (iii) where no specific methodology or data source is required, and the use of 'any other reasonable method' is permitted, the provision itself contains what is in effect a separate reasonability test, namely the cap on the profit amount based on the actual experience of other exporters or producers. Thus, in our view, Article 2.2.2's requirement that actual data be used (and its establishment of a cap where this is not the case) are intended precisely to avoid the outcome that Poland seeks, namely subjective judgements by national authorities as to the 'reasonability' of given amounts used in constructed value calculations.*[13]

It is therefore clear that in the circumstances of an Other Reasonable Method Profit, the cap is included to ensure that the profit applied to the normal value is indeed reasonable. The cap is not required for the other two methodologies, because those are more prescriptive in terms of the information that can be used, and how that information can be used. If it is not possible to apply that cap, there can be no certainty that the profit calculated was reasonable. The use of the *"reasonable method"* profit is therefore not open to be used in the circumstances pertaining to NatSteel. Accordingly, we respectfully submit that it is not open for a profit to be determined under Regulation 45(3)(c) in NatSteel's circumstances.

We also note OneSteel's argument that:

> *the Parliamentary Secretary cannot reasonably identify the actual amounts realised by the exporter, NatSteel, from the sale of the same general category of goods in the Singaporean domestic market.*

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12 *Panel Report, EC — Bed Linen*, paras. 6.96–6.98.
13 *Panel Report, Thailand — H-Beams*, paras 7.122–7.125.

OneSteel does not substantiate this point. That is because the Parliamentary Secretary could and did identify the actual amounts realised by NatSteel in its sales of steel rebar in the domestic market. The Commission considered that *"all rebar products sold by NatSteel are like goods for the purposes of this investigation"*.[14] Similarly, NatSteel's pricing strategy is the same for both self-manufactured rebar and imported rebar sold in the domestic market.[15] NatSteel's domestic CTM was verified, both upwards and downwards – there is no suggestion on the Commission's behalf that there was anything incorrect or unreliable with regard to the domestic CTM. That CTM properly represents the costs associated with supplying rebar to the domestic Singaporean market – whether that rebar was self-produced or imported. Comparing the CTM and the domestic selling costs to domestic prices is an accurate and correct methodology for identifying the *actual amounts realised* by NatSteel on its sales of rebar in the domestic market.

As a final point, we do not believe that the decision to adopt a particular profit methodology is, in itself, capable of being "incorrect" from a legal perspective. There is no hierarchy between the different non-OCOT profit methodologies.[16] Provided the facts allow it, it is legally permissible for the Parliamentary Secretary to select any of those methodologies. However, OneSteel's application does not argue why it would be preferable for the Commission to adopt an Other Reasonable Method Profit instead of a General Category Profit. So, even if OneSteel was correct in its interpretation of Regulation 45(4) – and that there was no bar to the adoption of that profit in the circumstances pertaining to NatSteel – it does not follow that an Other Reasonable Method Profit should be adopted over a General Category Profit. Insofar as OneSteel has failed to substantiate why that is the correct and preferable outcome, we consider its challenge must fail.

For the above reasons, NatSteel submits that:

- The Parliamentary Secretary did not err in working out profit on the sale of goods under Regulation 45(3)(a).

- The Parliamentary Secretary cannot work out a profit under Regulation 45(3)(c), as that profit could not be "capped" by Regulation 45(4). In the absence of such a cap, the profit under 45(3)(c) may not be reasonable.

C Normalisation of NatSteel's costs did not render them non-compliant with Regulation 43

At Part 10.2 of its Application, OneSteel submits that the Parliamentary Secretary has erred in accounting for a "normalisation adjustment" in NatSteel's cost of production or manufacture of the goods in the country of export.

The background to the normalisation adjustment is provided at Section 7.2.3 of NatSteel's Visit Report. As detailed in that Section, **[CONFIDENTIAL TEXT DELETED – details regarding projects undertaken by NatSteel]**.[17]

The first thing to note is that this "adjustment" did not relate to the **[CONFIDENTIAL TEXT DELETED – costs]**. As noted in NatSteel's exporter questionnaire response, **[CONFIDENTIAL TEXT DELETED – treatment of costs for accounting purposes]**.[18] This was done in accordance with Singapore's generally accepted accounting principles ("GAAP") in consultation with NatSteel's external auditors, **[CONFIDENTIAL TEXT DELETED – auditors]**. The normalisation adjustment related to a more pernicious issue **[CONFIDENTIAL TEXT DELETED – reasons for adjustment]**. Failure to adjust for these **[CONFIDENTIAL TEXT DELETED – costs]** would result in a random and opportunistic outcome, not reflective of NatSteel's **[CONFIDENTIAL TEXT DELETED – costs]**.

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14 Visit Report, page 12t.
15 Report 264, page 36.
16 Panel *Report, EC — Bed Linen*, paras. 6.59–6.61
17 Visit Report, page 22.
18 NatSteel Holdings Pte Ltd, *Exporter Questionnaire* response, page 47.

NatSteel submitted that a normalisation adjustment should be calculated **[CONFIDENTIAL TEXT DELETED – methodology submitted by NatSteel]**. During the verification, NatSteel presented evidence to the Commission to support this position. Ultimately, upon review of that evidence, and consideration of NatSteel's costs and records generally, the Commission opted for a more limited and nuanced approach to adjusting for **[CONFIDENTIAL TEXT DELETED – costs]**.

The normalisation adjustment ultimately adopted by the Commission is based upon cost breakdowns and qualitative and technical explanations relating to **[CONFIDENTIAL TEXT DELETED – reason necessitating normalisation adjustment]**. Based on the information provided by NatSteel, the Commission considers there was sufficient evidence to support the need for a normalisation adjustment.

OneSteel claims that there is no basis for such an adjustment. This is not correct. Regulation 43(1) sets out how the Parliamentary Secretary must work out "*an amount to be the cost of production or manufacture of like goods in a country of export*". Regulation 43(2) states:

> *(2) If:*
>
> *(a) an exporter or producer of like goods keeps records relating to the like goods; and*
>
> *(b) the records:*
>
> *(i) are in accordance with generally accepted accounting principles in the country of export; and*
>
> *(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;*
>
> *the Minister must work out the amount by using the information set out in the records.*

Put simply, "the amount", being the amount the Parliamentary Secretary works out to be the cost of production or manufacture in the country of export, must be worked out on the basis of the information set out in an exporters' records, provided the requirements of paragraphs (a) and (b) are met.

OneSteel contends that the normalisation adjustment cannot be adopted, because to do so, would mean that the costs used would not meet the requirement that they are *"in accordance with generally accepted accounting principles".* This is not correct. As a starting point, Regulation 43(2) relates to "records" rather than the "amount" determined under Regulation 43(1). There can be no doubt that NatSteel's records were kept in accordance with the generally accepted accounting principles of Singapore. This is confirmed by the opinion of the Independent Auditor for the 2014 audited report, as extracted at page 10 of Visit Report, and by the Commission during the verification.[19] Provided the Commission is satisfied, as a starting point, that the records meet the requirements of Regulation 43(2), then the "amount" – being the cost of production or manufacture of like goods in a country of export - must be worked out by using the information set out in those records.

This has been done. The "normalisation adjustment" is provided as a separate and individual amount in NatSteel's CTMS information. There can be no dispute that the Parliamentary Secretary worked out the CTM using the information in NatSteel's records. The per unit cost normalisation adjustment was based on all of that information as per the relevant Regulations.

NatSteel does not accept that the normalisation adjustment itself has not been calculated on the basis of information in NatSteel's records. As per NatSteel's Visit Report, the normalisation adjustment was ultimately effected via adjusting:

> ***[CONFIDENTIAL TEXT DELETED – costs]***[20]

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19 Visit Report, page 24.

20 Visit Report, page 23.

NatSteel understands that this was done using NatSteel's financial records. For example, **[CONFIDENTIAL TEXT DELETED – details of information used to calculate normalisation adjustment]**.[21] Accordingly, the normalisation adjustment continues to be based upon NatSteel's financial records, all of which are kept in accordance with the generally accepted accounting principles. The *use* of that information was and is a matter that is within the expertise and discretion of the Commission.

Given that the normalisation adjustment was based on positive evidence from NatSteel's financial records, we respectfully submit that it was correct and preferable for the Parliamentary Secretary to consider that adjustment when – in the words of Regulation 43(1) – working out an *"amount to be the cost of production or manufacture of like goods in a country of export".*

NatSteel submits that the cost to make calculated by the Parliamentary Secretary – including the normalisation adjustment – was based upon NatSteel's records. Resultantly, the Parliamentary Secretary has worked out that amount in accordance with the requirements of Regulation 43(2). Accordingly, OneSteel's submission must fail.

D Imports from Singapore did not cause OneSteel material injury

In addition to the above issues, NatSteel wishes to convey its support for the grounds of review raised by Best Bar in its review application. NatSteel lodged two submissions during the investigation which it considers establish that imports from Singapore did not cause the Australian industry material injury.

NatSteel notes the overarching requirement in Article 3.1 of the Anti-Dumping Agreement that a material injury finding be based on *"positive evidence"* and an *"objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products".* NatSteel does not consider the material injury analysis undertaken by the Commission to have met this requirement. Report 264 finds that OneSteel suffered from the following forms of "injury":

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

NatSteel does not believe that these forms of injury can be attributed to imports from Singapore. NatSteel considers that the conclusion that its products have caused the Australian industry the above injury is based on an incorrect "cumulation" of imports from Singapore with those from Korea, Spain and Taiwan.

1 Imports from Singapore did not cause OneSteel to lose sales volume or market share

At Part B of its application to the ADRP, Best Bar shows that the 4.3% decrease in sales volume and 3.7% decrease in market share suffered by OneSteel could not be attributed to imports from Singapore. This is because, according to OneSteel's Annual Report, OneSteel's sales of reinforcing bar had increased over the previous financial year. This, *prima facie*, would seem to raise questions regarding the validity of the conclusion that OneSteel had suffered a fall in sales volume and a fall in market share as a result of the dumped imports. However, as Best Bar notes, the Annual Report then

[21] Based on the Commission's calculation of the Normalisation Adjustment (included as either confidential attachment COSTS10 or confidential appendix 1 to NatSteel's Visit Report).

goes on to state that its "wholesale business" increased its sales of reinforcing and structural products, whereas its "retail business" did not.

The Commission has stated that Singaporean rebar competes with Australian rebar in one arena only, being in sales to the Best Bar group of companies.[22] NatSteel does not sell rebar to any Australian entity besides Best Bar. When Best Bar had the ability to purchase rebar from OneSteel, it only did so from the "wholesale" business. The wholesale business is OneSteel, the Australian industry for the purposes of the anti-dumping investigation. However, the OneSteel Group also has a retail business – being OneSteel's related distribution entities OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company, to whom OneSteel sells a significant proportion of its rebar.

If the 4.3% decrease in rebar sales identified in Report 264 occurred in relation to OneSteel's "retail sales", then that injury cannot be attributed to imports from Singapore. Imports from Singapore did not directly compete with these businesses. NatSteel notes that it raised this issue with the Commission in its submission dated 22 September 2015. In this regard, Report 264 concludes:

> *…the Commission's assessment is that sales to OneSteel's related entities are arm's length, that OneSteel and its related entities are competing in the same Australian market and sales to related entities were not sheltered from import competition. The Commission has concluded that the analysis relating to volume, price, profit and profitability should be completed at the aggregated level in the Australian market for rebar.*[23]

Respectfully, this does not assist the Commission. NatSteel notes:

(a) It is not clear how OneSteel's sales to its related retail entities are *"not sheltered from import competition"*. OneSteel's Visit Report makes it clear that OneSteel's related entities only purchase rebar from OneSteel.[24] OneSteel's related entities will not switch suppliers irrespective of the price offered by importers. Where, then, is the competition?

(b) It is not clear what relevance the "arms length" nature of the sales between OneSteel and its related entities has to the question of whether those sales were subject, and hurt, by import competition. This would appear to be an irrelevant consideration.

What it clear is that the Commission had evidence before it – evidence from OneSteel itself – that the loss of sales volume only occurred in relation to OneSteel's sales to its related entities. If that is the case, then imports from Singapore could not have caused the volume injury found to be suffered by OneSteel.

As such, NatSteel considers that the finding that imports of rebar from Singapore cannot be considered to be based on positive evidence.

2 Imports from Singapore did not cause price suppression or reduction in profit

In relation to price injury, NatSteel supports Best Bar's comments. It is not clear how the "price undercutting" analysis could implicate NatSteel's imports. Indeed, as NatSteel understands it, Best Bar does not sell the rebar in the form in which it is imported. Therefore, we cannot understand how a comparison of *"importer sales of dumped rebar"* could be used to find that NatSteel's exports have caused injury to OneSteel. Either they do not, or Report 264 has compared sales of goods that fall outside the scope of the investigation in the case of Best Bar's prices. In either case, there does not seem to be positive evidence that Best Bar's sales of rebar undercut OneSteel's, and no *objective*

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22 Report 264, page 72.
23 Report 264, page 75.
24 *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.

examination of the effect of imports from Singapore prices in the domestic market, nor of the *consequent impact of these imports on domestic producers of such products*.[25] Report 264 notes that there are some weaknesses with regard to the "price undercutting" analysis:

> *Although the price undercutting analysis detailed in this chapter does not demonstrate consistent undercutting for every month of the investigation period, based on evidence of the degree of price sensitivity in the rebar market, OneSteel's matching of import prices and the price suppression found, the Commission is satisfied that the imported goods have had a significant effect on OneSteel's prices.*[26]

To bolster the finding that dumped imports had caused injury to OneSteel, the Commission refers to the degree of price sensitivity in the market, and OneSteel's matching of import prices.

There is both a legal and a factual error in this conclusion.

Legally, the Commission has referred to the findings of the Panel in *EC –Salmon (Norway)* as an authority for the position that *"investigating authorities shall consider whether there has been significant price undercutting or whether the effect of such imports is to otherwise depress prices to a significant degree or prevent price increases, which otherwise would have occurred to a significant degree"*.[27] In fact, this is just a restatement of Article 3.2 of the Anti-Dumping Agreement.

What *EC-Salmon (Norway)* discusses is the requirement that price undercutting be found to be "significant". Specifically:

> *The significance of any such undercutting would, in our view, be a question of the magnitude of such price difference, in light of other relevant information concerning competition in the domestic market between the imports and the domestic product, the nature of the product, and other factors.*[28]

Similarly, if price suppression is identified as being caused by the relevant imports, it must be *significant* price depression. Otherwise, the Panel considers whether a price premium needs to be considered in the context of a price undercutting analysis, and explains that *"whatever determinations are made by an investigating authority, and whatever information is relied upon in making those determinations, must be carefully considered, and the conclusions adequately explained"*.[29]

Report 264 does not explain why the price suppression caused by dumped imports from Singapore is considered to be significant. Nor is there an explained finding that the price undercutting identified was significant. To the extent that Report 264 relies upon *the effect* of the imports as causing price suppression, NatSteel questions whether this conclusion is based on positive evidence, or an objective examination of the effect of the exports.

Besides price undercutting, Report 264 identifies the degree of price sensitivity in the market and OneSteel's practice of "matching" import prices as showing that "*the imported goods*" have had a significant effect on OneSteel's prices. However, these factors cannot be limited to "dumped" imports of rebar. Rather, they are general to all imports of rebar. Price sensitivity would not be limited to imports from Singapore, Korea, Spain and Taiwan - it must be a market-wide phenomenon. Similarly, it is self-evident that OneSteel would "match" its prices from all import sources, irrespective of the current volume imported from that source. This must be the case, because the high level of "price sensitivity" found to exist in Report 264 would mean that importers and their customers would change

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25 As required by Article 3.1 of the *Anti-Dumping Agreement.*
26 Report 264, page 86.
27 Report 264, page 86.
28 *EC-Salmon (Norway)*, Panel Report, paragraph 7.638.
29 *Ibid.* paragraph 7.642.

source regularly and without hesitation, based only on which source offered the lowest price. Clearly then, OneSteel's pricing policy must be driven by the lowest price in the market.

These are important points. NatSteel considers its prices were generally the highest in the market. Report 264 confirms this when it states that:

> *…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.*[30]

The above statement reveals that for 75% of the period of investigation, NatSteel's prices were above the prices offered by the three countries found not to be dumping. Put another way, if NatSteel's rebar and the rebar from Malaysia, Thailand and Turkey were the only prices in Australia, the vast majority of "price injury" would have been caused by non-Singaporean, non-dumped rebar. However, the above analysis does not consider where NatSteel's prices were in relation to other "dumped" imports, let alone where they were in relation to prices from countries not subject to the investigation. If a fuller analysis was undertaken, we are certain that there could be no finding that NatSteel's exports had caused the injury which has been attributed to them.

This is significant, because it poses the question - on what logic does Report 264 find that imports from Singapore caused price injury to the Australian industry? In our view, there is no logical way to accept that this was the case. This is particularly so because, as pointed out in Best Bar's application, Report 264 fails to properly consider the volume and price of imported goods that were not dumped, as required by Section 269TAE(2A)(a) of the Act, despite the causation narrative proposed in Report 264 making it clear that these imports would have the same injurious effect as the "dumped imports".

Accordingly, NatSteel supports Best Bar's submission that the finding that rebar from Singapore has caused price injury to the Australian industry is incorrect. NatSteel does not consider the finding that Singapore rebar caused injury to OneSteel can be said to be based upon an *objective examination of the effect of imports from Singapore prices in the domestic market,* nor of the *consequent impact of these imports on domestic producers of such products*.[31]

3 Report 264 incorrectly cumulated the effect of NatSteel's rebar with the effect of rebar from the other countries

NatSteel supports Best Bar's position at Section E of its application to the ADRP that it was not appropriate, having regard to the conditions of competition between exported rebar from Singapore and exported rebar from Korea, Spain and Taiwan, as well as the conditions of competition between exported rebar from Singapore, and OneSteel's rebar, to consider the cumulative effect of imports from Singapore along with imports from Korea, Spain and Taiwan.

As outlined in this submission, the analyses that led to the finding that imports from Singapore caused the price and volume injuries identified by the Commission cannot easily be linked to imports from Singapore. The "conditions" pertaining to NatSteel's competition with OneSteel and other import sources were markedly different to those pertaining to the competition between OneSteel and those other import sources. If anything, the cover of cumulation has been used to obscure whether, and to what extent, imports from Singapore have actually been considered in the injury analysis. In NatSteel's view, this rendered it "inappropriate" to cumulate the impact of imports from Singapore with that of other imports.

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30 Report 264, page 85.

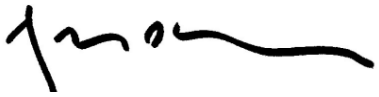
31 As required by Article 3.1 of the *Anti-Dumping Agreement.*

E Conclusion

NatSteel submits that:

- The information supplied by NatSteel was reliable, and it was appropriate for the Parliamentary Secretary to use that information to determine NatSteel's normal values under Section 269TAC(2)(c).
- The Parliamentary Secretary did not err in working out a profit to be applied to NatSteel's normal value under Regulation 45(3).
- The Parliamentary Secretary did not err in determining a normal value under Section 269TAC(2)(c) by accounting for a "normalisation factor", because the CTM that was worked out used NatSteel's financial records, which were kept in accordance with GAAP.
- Imports from Singapore did not cause material injury to the Australian industry, and, thus, there was no basis for the Parliamentary Secretary to make the reviewable decision against imports from Singapore.

Yours sincerely



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