BESTBAR®

2ND October 2015

Australian Productivity Commission
Canberra Office
Level 2, 15 Moore Street
Canberra City ACT 260

RE: Submission to the Productivity Commission - Best Bar's experiences with Australia's Anti-Dumping System

Best Bar Reinforcements (Best Bar) commenced operation in 1995. Best Bar's primary function is the manufacture of steel reinforcement products for sale to the Australian civil, commercial and residential construction industries. The major input for Best Bar's diverse range of steel reinforcing products is "steel reinforcing bar" (rebar) which Best Bar has been sourcing from Natsteel Holdings Pte Ltd (NatSteel), a mill based in Singapore, since 1998.

Best Bar's major competitors in the steel reinforcement product market are OneSteel Reinforcing and the Australian Reinforcing Company (ARC). Like Best Bar, these entities manufacture a range of reinforcement products from rebar. However, each of these entities only purchases rebar from their related entity, OneSteel Manufacturing Pty Ltd (OneSteel).

On 17 October 2015, the Anti-Dumping Commission (Commission) initiated an investigation into the alleged dumping of rebar from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey following an application from OneSteel. Best Bar is the sole importer of rebar from Singapore, and does not sell that rebar in the Australian rebar market in the general course of business. Following the initiation of the investigation the Commission made a Preliminary Affirmative Determination (PAD) on 13 March 2015 and has subsequently indicated in its Statement of Essential Facts (SEF) – published 2 September 2015 – that it will be recommending to the Minister or the Parliamentary Secretary that it will be imposing anti-dumping measures on imports of rebar from Singapore.

Best Bar's experience with this investigation has led it to the conclusion that the balance of interests in the anti-dumping system is tilted in favour of protection of the applicant for the investigation and away from the broader interest of the Australian economy. This opinion is based on the following factors:

- It is too easy to make a material injury finding
- Preliminary affirmative determinations are made without sufficient consideration of the evidence
- The "Australian industry's" reliance on anti-dumping investigations
- The is no consideration of the impact that the imposition of anti-dumping measures would have on the Australian economy

In putting these points forward, we need to specify that the rebar investigation is ongoing. The final recommendations are due to be made to the Minister on 19 October 2015, so the comments below regarding the Commission's proposed findings need to be understood in that context.

Similarly, while we are aware of the Commission's proposed finding that rebar from Singapore was dumped, we understand that NatSteel has highlighted some errors in that finding in a recent submission to the investigation.

It is too easy to make a material injury finding

Best Bar is an Australian business that employs over XXXX people. As noted above, its major source of revenue is from the sale of reinforcing steel products, manufactured out of rebar imported from Singapore. We don't just bring the rebar in, we add value, to both the rebar and the Australian economy, by producing reinforcing steel products. We are a strong source of competition in the reinforcing steel products market, and we are independent, in the sense that we are not related in any way to OneSteel.

In a dumping investigation, an importer has no ability to impact the finding of whether dumping occurred. That is something that is established at the exporter level. As we have said above, we do not think that our Singaporean rebar was dumped – our understanding is that the Commission's SEF findings were erroneous to that extent. Nevertheless, dumping is not in and of itself an issue – as the Productivity Commission (PC) is aware, there are many benefits to having cheaper priced materials available in a market – it is only where that dumping is found to have caused material injury to an "Australian industry producing like goods" that anti-dumping measures can be imposed. It is really in relation to the material injury side of things where our boots-on-the-ground experience can be of assistance to the Commission. This is why we are so surprised that the Commission could be considering finding that our exports caused OneSteel material injury.

Since 2010 there has been a decrease in demand for rebar from the construction industry. This, and the aggressive pricing adopted by the Australian industry, has injured Best Bar. This is particularly clear when you consider that imports of rebar from Singapore have decreased by XXXX between 2010/11 and 2013/14 and that the number of people employed by Best Bar has decreased by XXXX% since 2012. Although these factors have hurt Best Bar, the only recourse available to us has been to reduce costs to ensure we remained competitive. We did this in a number of ways, including investing in equipment and our people and by re-engineering internal processes to reduce wastage.

In contrast, the Commission has found that OneSteel's sales volume actually increased by 14% between 2010/11 and 2013/14 (this figure includes a 4% decrease in sales volume in the period of investigation – FY2013/14 – when compared to sales volumes in the year directly before). OneSteel continues to be the source of the majority (we believe 80%) of the rebar sold in Australia. We cannot understand how this can logically be considered to be material injury.

The Commission has found that OneSteel's prices were consistently below its cost to make and sell rebar between 2010/11 and 2013/14. The Commission's conclusion is that, but for dumped imports, OneSteel's prices would be profitable. However, OneSteel has stated on a number of occasions, including in the application for the rebar anti-dumping investigation, that the production of rebar is volume-dependant and that, as a result, OneSteel seeks to hold market share at the expense of price to ensure that production and sales volumes are maintained. In the face of shrinking demand from the construction industry OneSteel has managed to increase its market share through this aggressive volume-centric pricing strategy. Yet, the Commission attributes this below cost pricing to imports of rebar.

Ultimately, we think that OneSteel is pretty well off given the circumstances in the market. We do not see that the injury it has been found to have suffered could be considered to be "material". But the above explanation illustrates one of the disappointing facets of the current administration of the dumping system. Those of us that do not fall within the statutory definition of the "Australian industry producing like goods" are required to innovate and restructure when times are hard – we're not complaining about that, it is simply what you expect competing in a dynamic market – but the handful of corporations that fall into the definition of the "Australian industry... etc" can simply apply for dumping duties in order to lessen the competition that they face and boost their performance. The purpose of the material injury test should be to ensure that dumping duties are not imposed without undue reason. However, it seems to us that provided there is evidence of dumping a finding that that dumping has caused material injury will follow as a matter of course.

We believe that "material injury" would have to be something serious, beyond the normal impact of competition and fluctuations in market conditions. We cannot understand how a corporation that has increased its sales volume by 14% could be found to have suffered materially. It should not be sufficient for the Commission to conclude that material injury has been suffered based on a finding that OneSteel could be doing better if not for the dumped goods – the same conclusion could be drawn in relation to any source of competition.

Additionally, we do not understand how it can be found, as the Commission proposes to do, that our imports from Singapore have specifically caused the injury that OneSteel complains it has suffered. In determining whether dumped imports have caused material injury the Commission has stated that it is considering the "cumulative" effect of all of the imports that are currently considered to have been dumped. This is something that the Commission is able to do under the Customs Act. However, the factual circumstances surrounding imports of rebar from Singapore are significantly different to the circumstances surrounding the imports from other countries. Specifically, the majority of imports are on-sold by the importer to a steel-service centre. These steel-service centres can also purchase rebar stock from OneSteel. However, Best Bar's imports from Singapore are only consumed by Best Bar, before being sold in the downstream market. Therefore the impact – if any – of Best Bar's imports on the business of OneSteel is completely different to the impact of imports from other sources. Yet, because the Commission is considering the impact from all sources alike it will be sufficient for the Commission to establish that other imports besides those from Singapore have caused OneSteel injury and that finding will be generalised to include our imports from Singapore. That doesn't make any sense, and could result in the imposition of duties where none are required.

Best Bar's imports of rebar would account for approximately XXXX% of the volume of rebar imported into Australia. Given that there are only two sources of rebar in the Australian market, imported rebar and rebar produced by OneSteel, we consider that this means we are responsible for XXXX% of the rebar in Australia. Apparently under this factual scenario, the Commission is satisfied that our imports have caused OneSteel material injury.

An improperly calibrated material injury analysis can result in the imposition of duties where no duties should be imposed. In other words, it can harm the interests of importers and industries that are reliant upon those importers. In our view, it is too easy to find that injury is material, and too easy to find that that

injury is caused by dumping. So, we respectfully say that the current policy regarding the material injury determination is skewed towards the interests of the applicant.

Preliminary affirmative determinations are made without sufficient consideration of the evidence

Our understanding is that a PAD can only be made after 60 days from the day on which the investigation was initiated, and then only if the Commission considered that there was "sufficient grounds" to publish the notice, which we imagine means sufficient grounds that dumping occurred and caused material injury to the local industry. In our case, a PAD was made on 13 March 2015. The OneSteel visit report was not published until 2 July 2015. If it took the Commission that long to finalise its analysis of the information gathered during its visit with OneSteel, how could of it had "sufficient grounds" to determine that OneSteel had suffered material injury for the purposes of making a PAD back in March? Why were other interested parties denied the chance to comment on the outcome of the OneSteel verification visit prior to the making of the PAD?

We understand that there has been significant pressure on the Commission to make PADs as a matter of course. In our view, this ignores the interests of all other interested parties whose businesses are impacted by the requirement to lodge securities upon importation and the impact that a PAD can have on an importer's business. The imposition of a PAD can and will lessen competition, and so a PAD should only be made in circumstances where there is clear evidence to support the need for it.

Reliance of the Australian industry on anti-dumping investigations

OneSteel has been an enthusiastic adopter of the anti-dumping mechanism in recent years. Over the last five years it has been responsible for the initiation of no fewer than eight anti-dumping investigations and inquiries. Again, we feel that if the material injury determination was undertaken with greater rigour, then in many cases, even if dumping were to occur, it would not be found to have caused material injury and would not result in imposition of dumping duties.

We note that in 2007 the Australian Competition and Consumer Commission (ACCC) allowed the acquisition of Smorgon Steel Group Limited by OneSteel Limited after accepting a court enforceable undertaking from OneSteel that was created to be a "substantial disincentive" for OneSteel to make anti-dumping applications that were "speculative or poorly targeted" with regard to imports of a range of products, including rebar, on the basis that such activities could lead to a "substantial lessening of competition". The simple fact is that for the majority of steel products produced in Australia, imports are the only alternative source. The initiation of

investigations and the imposition of PADs causes significant disruption to imports and the imposition of duties, which essentially removes imports from the equation, will lessen competition and hand over significant market power to the Australian industry which produces like goods.

The Customs Act identifies that anti-dumping is aimed at targeting short term dumping activity from exporters. As a rebar importer for 20 years prior to this recent action, we find it incredulous that the claim should be raised now. Over the years there have been minimal changes to our pricing or supply arrangements, we feel this anti-dumping claim has been applied too broadly, is erroneous and anti-competitive and does not respect the long term supply relationships previously in place.

The issues surrounding the anti-dumping and countervailing system, although designed to address the negative impacts of price discrimination by overseas companies on Australian industries, has highlighted the tension between preventing injurious pricing on the one hand and encouraging the beneficial effects of competition on the other. This is eloquently being played out in the current anti-dumping action with the potential to impact the downstream rebar processing and construction "industry" and the thousands of people employed in this industry. In assessing this action we are finding it difficult to rationalise how the ADC can be used to protect the interests of a single "company" to the cost of entire industries.

No consideration of the impact that the imposition of anti-dumping measures would have on the Australian economy

Australian manufacturers and producers operate in a global economy and benefit from international supply chains and access to foreign markets. The benefits of such competition may be felt by consumers and purchasers of inputs who benefit from cheaper prices and greater choice, which can translate into improved profit and productivity.

We acknowledge that price discrimination between different markets may have an impact on the industry's performance. However, in the rebar investigation the imposition of anti-dumping duties will undoubtedly reduce competition in both the rebar market and the downstream reinforcing steel market, cementing OneSteel' dominance in both markets.

Irrespective of whether or not it can be found that dumped imports have caused material injury, we are amazed to find that the current form of the anti-dumping system does not require a consideration of the broader competitive impacts that the imposition of dumping duties may cause and a weighing of those

impacts with the presumed benefit accruing to the local industry from the removal of dumped imports. While we understand that the current system allows the Minister to consider public interest grounds when determining whether to impose dumping duties, we are not aware that this ability has ever been exercised. In fact, we have even heard that the Commissioner has explained that he would not make "public interest" recommendations to the Minster. As much as anything, this confirms our view that the system is currently being run in a myopic way.

We note that at the conclusion of a recent review run by the PC, it was recommended that greater checks and balances needed to be built into the system, in the form of a bounded public interest test. In our view, a bounded public interest test would ensure that the broader impacts of anti-dumping duties would be fully considered before those duties were implemented.

Even if no such test is built into the anti-dumping legislation, the Commission should be required to appropriately assess the likely effect that any additional duties will have on the Australian market for the goods the subject of those measures and as well as on downstream industries and markets. Potentially, agencies with a higher-degree of economic literacy – such as the PC or the ACCC - could be given the opportunity to report to the Commission in relation to these vital economic issues.

The consistent failures of governments to incorporate public interest considerations into Australian anti-dumping and countervailing law suggests the system is unlikely to serve the public, but rather to serve only the interests of a small number of Australian producers at the expense of numerous other Australian businesses and consumers.

Conclusion

As an Australian processor we look to our governments and regulatory frameworks to support and protect our industries broadly, not individual entities. We believe this case highlights the way in which the system is currently skewed in favour of the interests of the applicant to the detriment of importers, downstream industries, consumers and the Australian economy at large.

Our experience with the anti-dumping system so far has led us to the conclusion that, provided there is sufficient evidence of dumping; a finding that that dumping has caused material injury will follow. We consider that such a position has an overall anti-competitive effect, as it decreases import competition. As the single manufacturer of steel reinforcing feed material in Australia, OneSteel is not an "industry", it is a

company. This single entity will gain at the expense of all other independent downstream users in the rebar market. This will ultimately reduce competition and increase pricing, impacting the entire rebar and construction industry.

In our view we believe a properly constituted anti-dumping system would require a balanced, objective appraisal of material injury and public benefit considerations prior to the finalisation of duties, rather than an assessment based purely on technical or numerical analysis of alleged dumping. This requirement is not just to protect our business' interests but to help protect and support the viability of the steel reinforcing industry as opposed to a corporate individual.

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