13 April 2015

NatSteel Holdings Pte Ltd

Anti-Dumping Commission investigation concerning steel reinforcing bar

Submission regarding the injury allegations of OneSteel Manufacturing Pty Limited

N O N - C O N F I D E N T I A L

A Introduction

On 16 October 2014, the Anti-Dumping Commission ("the Commission") published Anti-Dumping Notice No 2014/100 ("ADN 2014/100"), which officially initiated the present investigation into the alleged dumping of steel reinforcing bar exported from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey.

ADN 2014/100 explained that the Australian industry, OneSteel Manufacturing Pty Ltd ("OneSteel"), had alleged in its application ("the application") that steel reinforcing bar had been imported at dumped prices from the nominated countries and that this had caused the Australian industry material injury through:

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

Our client NatSteel Holdings Pte Ltd ("NatSteel") submits to the Commission that the application misrepresents the circumstances that existed, and which continue to exist, in the Australian industry and in the Australian market.

Ultimately, our client submits that OneSteel's inability to cover its costs is explained by its inefficiencies and business practices. No company can maintain losses forever. It does not matter whether the loss is $1 or $10 million – if it continually cannot be recovered then alleged dumping is not the problem.

Further, our client submits that OneSteel's commercial behaviour in the market place is heavy-handed. OneSteel's actions create demand from independent buyers that can only be satisfied by imported material. Subsequently, when that material is imported, at competitive prices, OneSteel turns to the regulator for protection.

Our client offers the opinion that OneSteel uses its market dominant positions as both a rebar manufacturer and as a rebar processor as part of a commercial "wedge" strategy against the interests of independent distributors and end-users. The threat and implementation of anti-dumping action is an element of this strategy. Our client submits that this is anti-competitive and contrary to the national interest and that, by failing to address its real problems, OneSteel's behaviour is ultimately self-harming.

B OneSteel's desire to insulate itself from competition

Our client submits that OneSteel is an inefficient, long term loss-making business.

The recent use of anti-dumping applications by the Australian steel industry as a way of disrupting competition and of artificially inflating prices in the various markets has become both an obsession and a crutch. OneSteel mentions the word *"dumping"* numerous times in its most recent financial announcement to the market, presumably with the intention of deflecting attention from the real problems that it faces.[1]

It is submitted that OneSteel's actions hinder competition in the market. It has an unhealthy focus on anti-dumping action, which it is attempting to use in order to squeeze out its competitors and reduce competition against it. It has been a key proponent of ever-tougher anti-dumping protection. Reliance on dumping outcomes for this purpose is clearly evident throughout recent media releases and financial reports issued by OneSteel's parent company Arrium Limited ("Arrium"). Allegations of dumping, and the pursuit of anti-dumping applications, can act as a convenient excuse to shareholders of companies that are performing poorly.

Arrium's 2015 first half results presentation to the Australian Stock Exchange ("ASX") refers to anti-dumping as an *"opportunity"* as part of its *"strategic focus"*. However, at the same time, in each of its three segments (mining, mining consumables and steel), it refers to a *"strong focus on cost reductions"* or *"further cost reductions"*. It can be extrapolated from that that OneSteel continues to operate with sub-optimal costs. If that were not the case it would not have to say that it needs to continue to reduce them.

OneSteel not only blames foreign exporters for its economic malaise – it also takes issue with the Commission and the conduct of its investigations. OneSteel has criticised the Commission about the time it takes to conduct its investigations, and about the findings and conclusions that the Commission arrives at.[2] Instead, our client submits that OneSteel should focus on its business, reinvestment, efficiency, the market and healthy competition.

NatSteel submits that this anti-dumping "marketing" conceals the real issues that are hurting the

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1 See Arrium Limited, Half Year Results - Results for announcement to the market: Half-year ended 31 December 2014, 18 February 2015, http://www.asx.com.au/asx/research/company.do#!/ARI.

2 *Ibid.*

company. There is no shortage of information on OneSteel's struggles in the media – a recent example is its September 2014 emergency equity raising (AUD754 million) that was designed to ease pressure on its balance sheet[3] by reducing its AUD1.7 billion debt burden.[4] OneSteel received all the money it intended to raise, however:

> *…about $280 million of the total came from share offer underwriters, who were unable to sell all of the stock to the market.*[5]

The market has thereby declared that Arrium's business model is not valued by the public investment market. Even its reduced debt burden is a heavy one.[6]

OneSteel not only relies on anti-dumping applications to reduce competition and to attempt to insulate itself from competition. During the period of investigation OneSteel (and Australia's other steel manufacturer, BlueScope) were accused of planning to erect another trade barrier against imports, namely a change to Australian standards applicable to four kinds of structural steel.[7] [8] The following was reported by the Australian Financial Review:

> *OneSteel and BlueScope Steel have been accused of a plot involving expensive and unnecessary chemical tests used nowhere else in the world as part of a campaign to keep out foreign competition.*
>
> *The claim was made in letters sent to Standards Australia and the Australian Consumer and Competition Commission by a coalition of 98 steel businesses that includes major importers such as Sanwa of Japan, Thyssen-Krupp of Germany, Australian-owned Chinese-based Steelscope and local steel consumers who are concerned the measures will push up steel prices.*
>
> *The key concern is that a draft technical standard for four kinds of steel used in mining, infrastructure and construction is significantly different from the International Standards Organisation which means foreign steel will no longer comply with local rules unless it re-*

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3 See Tim Binsted, *Dollar's drop cushions Arrium against iron ore price slump*, 5 January 2015, The Australian Financial Review.

4 See Sarah Thompson, Anthony Macdonald and Jake Mitchell (ed), *Hedge funds circle Arrium*, 10 February 2015, The Australian Financial Review.

5 See Ian Kirkwood, *Arrium eyes scale of Newcastle OneSteel Mill Site*, 14 October 2014, Newcastle Herald.

6 See Tim Binsted, *Dollar's drop cushions Arrium against iron ore price slump*, 5 January 2015, The Australian Financial Review.

7 The steel products involved were cold-formed structural steel hollow sections; hot-rolled plates, floor plates and slabs; hot-rolled bars and sections; and welded sections. The proposed revisions affected AS/NZS 1163, AS/NZS 3678, AS/NZS 3679.1 and AS/NZS 3979.2.

8 See http://www.hera.org.nz/Story?Action=View&Story_id=1900.

> *engineers production specifically for the Australian market.*
>
> *"Market competition would be substantially lessened by the draft ISO amendment as it will impede or prevent international steel manufacturers and importers from selling internationally compliant steel in Australia without introducing a different, separate and new testing procedure," the letter says.*[9]

This plan to introduce new tests for steel that would be specific to Australian market entry indicates the lengths to which the domestic steel industry will go to insulate itself from the need to compete, to invest, and to modernise.

C OneSteel's focus on its resources segment

NatSteel holds the opinion that in recent years Arrium has developed an unbalanced business model. From 2004 Arrium decided to focus on the iron ore side of its business, and not on its steel business. The branding change from "OneSteel" to "Arrium" is itself telling. That move upstream into mining has taken place at great expense. At the same time there does not appear to have been any investment or restructuring efforts directed towards improvement of Arrium's steel production.

The recent decline in iron ore prices has caused substantial losses to be incurred by Arrium. This has placed greater pressure on the company's steel business, as an alternative money-generating side of its business. However, OneSteel has not invested in its steel making technology and in its mills in the intervening years. The steel side of the business cannot compensate for the downturn in the resources side. Its inefficiencies in steel production have not been addressed, and it is prevented from competing effectively by reason of that inactivity.

Business commentators confirm this to be the case, saying the following about Arrium's business model in recent years:[10]

> *Arrium was lauded for its 2004 push to integrate an iron ore mine and take advantage of the boom in iron ore prices…*[11]

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9 See Geoff Winestock, *Arrium, BlueScope accused of 'trade barrier'*, 26 November 2013, The Australian Financial Review.

10 See Tim Binsted, *China's steel boom over, says BlueScope*, 27 October 2014, The Australian Financial Review.

11 See Paddy Manning and Glenn Dyer, *Stronger together? Why an Arrium-BlueScope merger might make sense*, 27 January 2015, http://www.crikey.com.au/2015/01/27/STRONGER-TOGETHER-WHY-AN-ARRIUM-BLUESCOPE-MERGER-MIGHT-MAKE-SENSE/.

….The plain truth is that a halving of the iron ore price, and related plunge in the value of the Australian dollar, have turned the tables on both companies and BlueScope now appears better placed as it is not shackled with an uncompetitive mining business.

But like Arrium, it is shackled to a low-margin steel-making business, which has been barely profitable for years. The recent 20% slide in the value of the Australian dollar should help both companies, but the currencies of two of their major competitors, South Korea and Japan, have also weakened…[12]

These quotes demonstrate that Arrium's investment focus on iron ore mining to the exclusion of steelmaking has, after a period of resource-price driven profit, turned into a source of mounting losses. Our client submits that Arrium has preferred its resources segments to its steelmaking segments. When Arrium should have been reinvesting profits in reducing steelmaking costs and improving steelmaking production, it instead over-invested in and favoured its high-cost iron mining segment, to the detriment of its steelmaking:

But from 2004 the companies parted ways, BlueScope stuck to basic steel making and processing, while OneSteel fixed on a strategy that will see it having spent well over $2 billion from 2004 till the end of next year re-jigging its basic processes and plunging into the export markets for iron ore as well as high-grade steel products.[13]

For example, OneSteel's investment focus on iron ore mining, rather than in its basic steelmaking, is demonstrated by its decision to export hematite and instead use a magnetite ore for its domestic steelmaking:

At a then cost of $250 million (that later grew and grew), OneSteel spent four years switching its iron ore product feed at Whyalla from high-grade hematite to upgraded magnetite pellets and exporting the hematite into world markets.[14]

The difference between the two types of ore is explained as follows:[15]

Hematite

Traditionally, the Australian iron ore industry has been based on the mining, production and export of high-grade hematite ores which currently account for approximately 96% of Australia's iron ore production.

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12 *Ibid.*

13 *Ibid.*

14 See Glenn Dyer, *How OneSteel stole the march on BlueScope*, 22 August 2011, http://www.crikey.com.au/2011/08/22/HOW-ONESTEEL-STOLE-THE-MARCH-ON-BLUESCOPE/

15 See http://www.gindalbie.com.au/investor___media_centre/magnetite_vs_hematite.phtml

High-grade hematite is often referred to as "Direct Shipping Ore" or "DSO" because it is mined and beneficiated using a relatively simple crushing and screening process before being exported for use in steel mills.

Magnetite

Magnetite ore has lower iron content and must be upgraded to make it suitable for steelmaking.

Magnetite ore is suitable for processing into iron ore pellets for use in modern steel production and currently accounts for approximately 50% of global iron ore production. The magnetic properties of magnetite enable it to be readily refined into an iron ore concentrate.

While magnetite is generally a lower-grade deposit, it is globally accepted as a viable and high-quality feedstock for the production of premium quality, low impurity steel.

The point here is that OneSteel has opted to use the lower grade magnetite in its steel making, which is initially of a lower grade and requires further processing, instead of using hematite, which is a higher grade direct ore source. The implications should be obvious. Rather than use its natural advantage for its own production – ready availability of hematite – Arrium has opted for magnetite. Other companies might take the view that a necessary business strategy is to employ their internal ability to reduce costs and to become more competitive in their downstream domestic markets. But that is not a choice that OneSteel has made in this respect.

It is acknowledged that scrap steel is, presumably, the main feedstock for OneSteel's rebar. Nonetheless, the application acknowledges that it is not the only feedstock:[16]

Rebar can be produced via a fully integrated steel production manufacturing process or, alternatively by using ferrous scrap metal as the principal raw material input to electric arc furnace steelmaking. In the OneSteel rebar production, the steel billet used as input feed to the rod and bar mills that produce the rebar coil and straights is produced either via the integrated steelmaking route (from Whyalla) or, via the electric arc furnace route (from Sydney or Laverton).

What is equally pertinent is that Arrium's attitude has been to focus on its resources segment rather than on the efficiency of its steelmaking. Anti-dumping relief is an income transfer from Australian consumers through the anti-dumping system. Our client submits that companies should first help themselves to become intrinsically more competitive. If OneSteel has left its overcapacity, old technology and consistent loss-making in its steel segment untouched, one might ask why the anti-dumping system should be asked to come to its aid.

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[16] See application, page 14.

OneSteel's focus on iron ore was attracted by high iron ore prices, a prize that it pursued while steelmaking remained unsupported and languishing. A commentator on OneSteel's FY2010/11 results states: [17]

> *The iron ore export business provided the bulk of that solid profit for OneSteel, with the company reporting "EBIT for the iron ore segment for the year was up 57% to $524 million, due mainly to higher US dollar prices and lower freight rates, partly offset by higher operating costs and the impact of the stronger Australian dollar.*
>
> *That was on a 21% rise in revenue to iron ore revenues $948 million for the year, which came despite the stronger dollar and flat demand that saw a total of 6 million tonnes of ore exported. The company made losses in its steel manufacturing business ($185 million) and small EBITs in its distribution.*

What these quotes demonstrate is that OneSteel has ridden a wave of rising iron ore prices, but neglected the opportunity to invest in reducing costs and boosting profitability outside iron ore while it had the revenue to do so. Now, with iron ore prices at historical lows, and with its over-commitment to iron ore starting to sting, OneSteel claims injury and seeks anti-dumping duties to ameliorate the consequences of its own failure to bolster its competitiveness in the steel market.

As a separate issue from the deficiencies in OneSteel's readiness to promote and invest in its steelmaking segment, the Commission must be very careful to ensure that the damage that present financial circumstances are causing to OneSteel's resources segment is entirely segregated from its steelmaking segment. Further evidence of OneSteel's own internal injury is the recent closure (announced on 16 February 2015) of its Southern Iron ore mine near Coober Pedy in South Australia, said to have been as a result of dramatic decreases in iron ore prices. Reportedly, this will cause AUD1.3 billion to be written off and 580 jobs to be lost.[18] In addition, Arrium will continue to be subject to large recurring payments that will cost it at least AUD70 million under an existing take and pay arrangement.[19]

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17 See Glenn Dyer, *How OneSteel stole the march on BlueScope*, 22 August 2011, http://www.crikey.com.au/2011/08/22/HOW-ONESTEEL-STOLE-THE-MARCH-ON-BLUESCOPE/

18 See Paddy Manning and Glenn Dyer, *Stronger together? Why an Arrium-BlueScope merger might make sense*, 27 January 2015, http://www.crikey.com.au/2015/01/27/STRONGER-TOGETHER-WHY-AN-ARRIUM-BLUESCOPE-MERGER-MIGHT-MAKE-SENSE/.

19 See Peter Ker, *Arrium the latest Australian miner to be stung by take-or-pay rail contracts*, 16 February 2015, The Australian Financial Review.

D OneSteel's failure to reduce its steelmaking costs

It is industry knowledge that OneSteel has a steelmaking capacity of over 2 million tonnes,[20] but that OneSteel utilises only between **[CONFIDENTIAL TEXT DELETED – NatSteel opinion of OneSteel's capacity utilisation]** of that capacity. This underutilisation is inefficient. It must have the effect of increasing OneSteel's per unit costs in comparison to firms that utilise greater degrees of their capacity.

In a recent article published in the Sydney Morning Herald, the CEO of Best Bar, an Australian processor of rebar ("cut and bend"), said that his organisation was:

> *…fed up with claims that steel imports are causing the industry's woes. He said overcapacity is the real problem. 'OneSteel has massive steel-making capacity. They could supply the whole Australian market and maybe 20 per cent more,' he said.*"[21]

The Commission should be alive to the possibility that OneSteel has developed a permanent overcapacity which, particularly in light of its continuing losses, is a major contributing factor in making OneSteel a high-cost, inefficient rebar producer. The Commission may find that OneSteel has spent hundreds of millions of dollars on its iron ore business whilst neglecting its steel business which has *"been barely profitable for years"*.[22] OneSteel was paid AUD64 million pursuant to the Steel Transformation Plan ("STP") as compensation for the prospective implementation of a carbon tax regime which was not ultimately imposed on OneSteel.[23] The Commission should ask OneSteel whether this subsidy has been deployed in any forward-looking steelmaking improvements.

Our client submits that OneSteel's lack of mill utilization is a result of not shutting down excess production resources and of not consolidating its remaining resources. It has spent money on other areas within its conglomerated business rather than on improving its steel product and reducing its production costs. Perhaps in recognition of the segment's high costs, Arrium sold or closed most of its

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20 See *Steelmaking capacity is 2.5 million tonnes,* http://www.onesteel.com/profile.asp.

21 See Tim Binsted, *Best Bar steels for fight with Arrium over 'dumping' claims*, 2 March 2015, Sydney Morning Herald, http://www.smh.com.au/business/best-bar-steels-for-fight-with-arrium-over-dumping-claims-20150301-13ix4n.html#ixzz3TAcl6n1v

22 See Paddy Manning and Glenn Dyer, *Stronger together? Why an Arrium-BlueScope merger might make sense*, 27 January 2015, http://www.crikey.com.au/2015/01/27/STRONGER-TOGETHER-WHY-AN-ARRIUM-BLUESCOPE-MERGER-MIGHT-MAKE-SENSE/

23 See *OneSteel gets $64m ahead of carbon tax*, 30 January 2012, The Australian Financial Review - http://www.afr.com/news/policy/tax/onesteel-gets-64m-ahead-of-carbon-tax-20120130-j3kpl

non-integrated steel merchandising businesses in the POI.[24]

In contrast, our client NatSteel has heavily invested in ways to reduce its costs; has introduced new technologies; and has adjusted its business model to increase the efficiency of its mills and improve profitability. This is what a progressive attitude and an open market – such as that of Singapore – encourages. NatSteel estimates that its mill is **[CONFIDENTIAL TEXT DELETED – number]**% cleaner and very significantly more efficient than OneSteel's mills.

Key evidence supporting the fact that OneSteel's steel business has been a long term burden to its other segments, and that this has not been addressed during the time it has chosen to focus on those other segments, is evident from the data submitted by OneSteel in its application and as repeated in the Consideration Report. It would appear that at no point in time over the past four years have OneSteel's costs of making rebar been less than the prices it records in its financial accounts for the internal transfers and/or sales of its rebar:

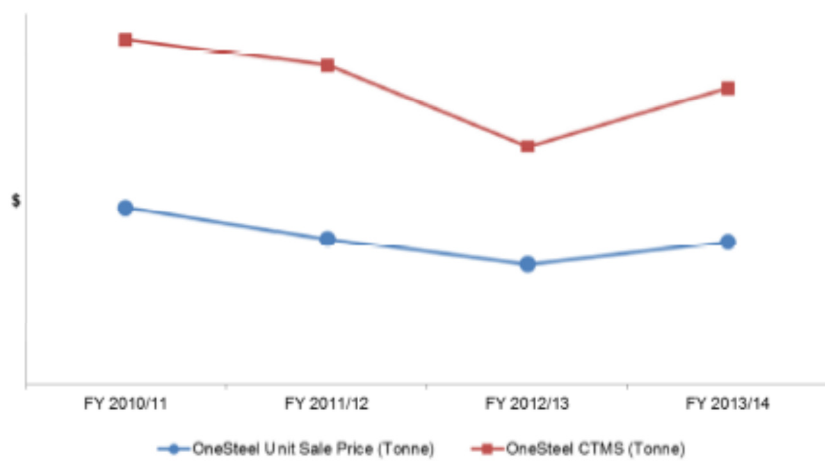

Figure 4 - OneSteel Unit Sale Price v Unit CTMS

OneSteel's financial performance in relation to rod-in-coil, a product which can be considered to be subject to similar cost and market factors, confirms its long term inability to cope with international competition. The same costs v revenue analysis as set out in the Statement of Essential Facts in relation

24 See http://www.asx.com.au/asxpdf/20130704/pdf/42gwmf30s65c5h.pdf

to the rod-in-coil investigation parallels OneSteel's rebar performance:[25]

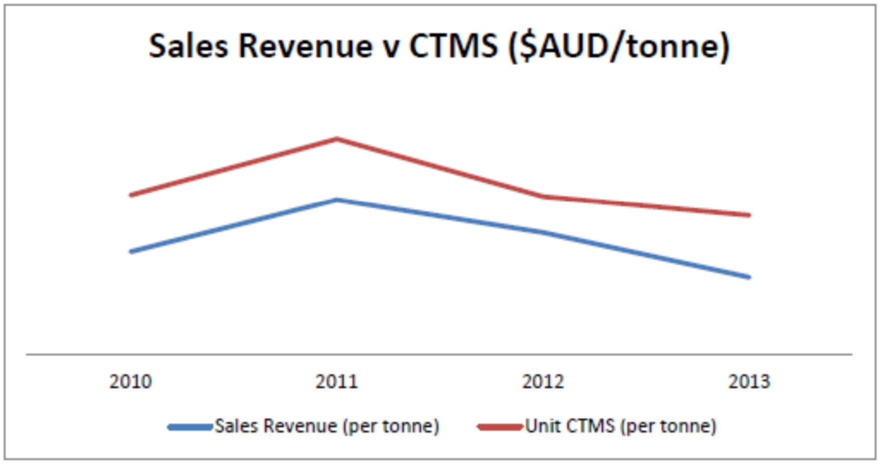

Figure 5 – Sales revenue per tonne vs CTMS per tonne

The picture of continued loss-making is also made very clear in this chart extracted from the Consideration Report:

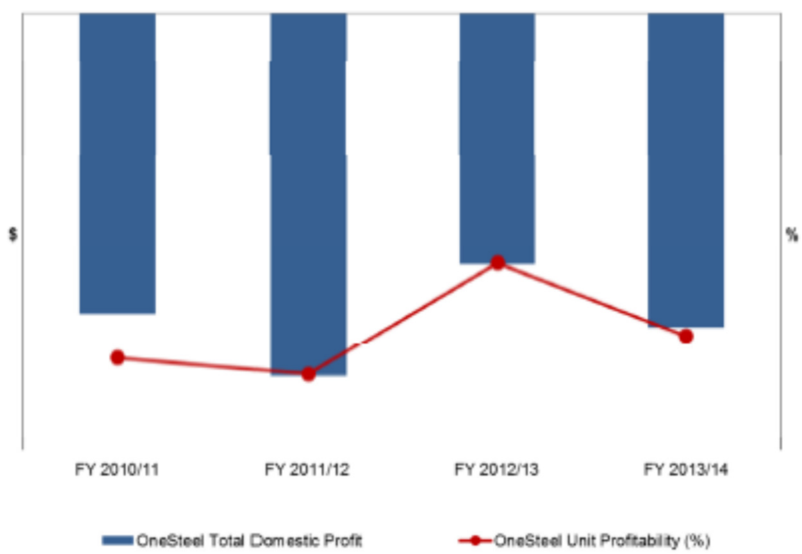

Figure 5 – OneSteel Profit and Unit Profitability

Our client submits that OneSteel Manufacturing is inherently inefficient and persists with production

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[25] See Statement of Essential Facts/Preliminary Affirmative Determination No 240, at http://www.adcommission.gov.au/cases/documents/054-PADReport240.pdf

practices which it has not restructured or modernised. The data presented to the Commission indicates that OneSteel was running at a loss before dumping was alleged to have begun.[26] In fact, OneSteel recorded a much larger loss in FY2012,[27] the year that imports from nominated countries decreased in market share, than it did in the POI.[28] And, at the end of the investigation period for injury, it was running at a loss only slightly higher than at the beginning of the period.

In summary, our client submits that OneSteel's steelmaking segment has operated at a loss for an extended period. This is evidence of long term structural deficiency in its production capacity, processes and technology. This does not appear to have been addressed. Our client submits that because of this OneSteel cannot compete effectively with other competitors in the market. Its inefficiencies are at such an extreme level so as to constitute a separate cause of injury that must not be attributed to allegedly dumped imports.

E External impediments to OneSteel's competitiveness

It is noteworthy that Arrium itself has not attributed losses in its manufacturing and downstream business to alleged dumping in its Annual Reports for FY2010 to FY2013. Instead, the blame in those reports was sheeted home to the effects of the global financial crisis and depressed market demand in the local construction sectors. More latterly the blame has been attributed to the high Australian dollar – a condition which quite plainly no longer exists. The effect of these impacts on OneSteel should not be attributed to any alleged dumping.

The following chart sets out the reported EBIT (earnings before interest and tax) of "Arrium Limited's Steel Business" as a percentage of revenue:[29]

FY2010	FY2011	FY2012	FY2013	FY2014
1.14%	(4.17%)	(0.92%)	(1.5%)	(1.84%)

26 See Consideration Report 264, at pages 32 and 34.

27 *Ibid*, at page 34.

28 *Ibid*, at page 32.

29 Source: Arrium Limited Financial Reports (manufacturing and distribution EBIT reported separately before 2013 and the combination of these two businesses reported together from FY2013).

It can be observed that its change in EBIT over its past two reported years has been only 0.34%. In circumstances where its EBIT trend has shown no material change in the POI in which dumping is alleged to have occurred compared to the previous periods, we query what material change is alleged to have come about such as to make things worse for OneSteel's overall steel business.

Other injury factors must also be acknowledged. The Australian Steel Institute ("ASI"), a lobby group for the Australian steel industry, places high energy costs as a lobbying priority, on the basis that they damage the competitiveness of the Australian steel industry. The ASI also highlights a range of government-imposed charges as damaging to the Australian industry's competitiveness. These factors existed and created cost uncertainty during a large part of the period of investigation.[30] These are also factors causing injury to the Australian industry that must not be attributed to dumping.

NatSteel agrees with the comments made by the Steel Exporters' Association of Turkey that regulatory policy including energy pricing, industrial relations and tax[31] in Australia are damaging to companies that are trying to operate here. That business regulatory costs impact badly on local businesses is confirmed by BlueScope Steel. NatSteel refers the Commission to the following comments made by BlueScope CEO Paul O'Malley about matters that would equally affect OneSteel:

> *'If we could divert the time we spend on policy engagement and stopping bad policies we would have much more time to spend on our business beyond a shadow of a doubt….*
>
> *Mr O'Malley… applauded the Abbott government's plan to cut red tape by $1 billion a year.*
>
> *'The [deregulation] focus is one of this government's single best initiatives. It's not sexy, but what they are doing is outstanding.'*
>
> *BlueScope estimates it has a burden of $100 million of regulatory costs and inefficient taxes.*
>
> *Mr O'Malley said his company has paid more payroll tax than its made profits in the last 5 years.*
>
> *He views payroll tax as 'a tax on Australian employment'. 'For the past eight to nine years, industry has been facing cost increase, after cost increase, after cost increase. A lot of that is driven by poor government policy and not addressing fundamental issues such as proper tax*

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30 See *ASI Priority Lobbying Issues*, dated 17 March 2014, http://steel.org.au/media/File/ASI_LC_Priority_Issues17_03_14.pdf

31 See Sally Rose, *BlueScope Steel narrows loss but misses forecasts*, 26 August 2014, The Australian Financial Review.

reform,' he said.[32]

Again, these are injurious factors, the damage from which must not be attributed to dumping.

Arrium notes that lower commodity prices have severely crimped investment and development in the resources sector, which has in turn led to reduced demand for steel reinforcing products:

> *Domestically, large infrastructure projects in the engineering construction sector continued to support demand for steel reinforcing products, but deterioration in commodity prices adversely affected demand from the resources sector as companies reduced maintenance and some project expenditure.*[33]

The Commission is requested to note these factors and to ensure that injury caused by them is not attributed to any alleged dumping. They cannot be ignored. They are no less a part of the financial and market framework that impacts on OneSteel than price competition from imported goods.

F OneSteel's confusing injury narrative raises serious issues

NatSteel doubts OneSteel's ability to become competitive and to return to profitability without self-help in the form of a rational reassessment of its steelmaking, and a well-directed reinvestment arising from that reconsideration.

However, at the same time as OneSteel has lodged its application, it is "talking up" the performance of its steel segment. In its FY2014 reporting, Arrium declares that it had a positive EBITDA for FY2014:

> *Total Steel revenue was $2,875 million, down 3% compared to the prior financial year. The decrease was due mainly to reduced sales volumes, including a 7% reduction in domestic sales volumes compared to the prior year. Despite the weaker market, underlying EBITDA was again positive, at $51 million, as the business continued to reduce costs including realising the synergy benefits related to the establishment of a single steel business late in the prior financial year. This included combining Steel Manufacturing and Steel Distribution into a single business which delivered $30 million of cost savings, and $44 million of inventory reductions. The strategic focus for Steel is on cash generation and its integrated value chain, and in line with this, the majority of Steel's non-integrated Merchandising businesses were either divested or closed during the year.*[34]

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32 See Tim Binsted, *China's steel boom over, says BlueScope*, 27 October 2014, The Australian Financial Review.

33 See Arrium Limited, 2014 Annual Report, http://www.arrium.com/investor-centre/reports-presentations

34 *Ibid.*

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.[35]

If this is the picture that OneSteel paints of its performance in steel during the POI, then one might query the need for this investigation at all.

Arrium states in its half-year financial report for June-December 2014 that:

- South-East Asian steel margins lifted towards the end of the half on lower scrap prices;
- steel demand increased;
- sales revenues increased;
- sales prices were helped by a lower dollar; and
- the construction sector, which accounts for 80% of Arrium's steel sales, experienced increasing activity in the residential and infrastructure sectors.[36]

Accordingly, Arrium's most recent half-year report presents to shareholders a narrative of growth and improving fortunes for the Arrium steel segment. Nonetheless, OneSteel now argues hardship before the Commission.

It is acknowledged that this report is for the first six months after the period of investigation. However, what NatSteel does wish to emphasise is that factors other than the alleged dumping, such as a high Australian dollar, were key contributors to Arrium's alleged injury during the period of investigation. As these factors are changing (the dollar is falling, as are steel raw material costs), Arrium is reporting improved performance and improving prospects. This is further demonstrated by these statements, also made by Arrium in its recent financial presentations to the market:

Steel continued to lower its cost base and increase its leverage to improved sales volumes and a lower Australian dollar…[37]

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35 *Ibid.*

36 See Arrium Limited, half year results ended 31 December 2014, http://www.asx.com.au/asx/research/company.do#!/ARI

37 *Ibid.*

Domestic construction activity has continued to improve from a low base, with sales volumes up 8% on the prior half. The business' keys earnings drivers such as: construction activity, particularly infrastructure; FX costs; and SE Asian Steel margins are all improving and underpin the most positive set of key drivers for our Steel business since the GFC.[38]

The earnings benefit from improved sales volumes, a lower Australian dollar and further cost reductions were more than offset by the impact of historic low South East Asian steel margins on domestic prices and margins.[39]

South East Asian steel margins started to lift towards the end of the half, supported by lower scrap prices. However, there is an approximate 3 month lag before this improvement is reflected in Steel's domestic prices and margins.[40]

Price increases announced in December supported by the decline in the Australian dollar.[41]

Our client agrees with OneSteel's observations about the emergence of factors which are having a favourable effect on OneSteel's ability to compete in the Australian market. Thus, the argument that a slice of its steel making segment (manufacturing) is loss making although the whole value chain of steelmaking (product manufacturing, further processing, and distribution and sales) is looking up, is hard to accept.

In this context our client has serious concerns about the legitimacy of OneSteel's "business unit accounting", in particular the way in which it chooses to "transfer" materials and finished products from one business unit to another. Indeed, if a single value chain – in this case, from scrap/iron ore to the final "cut and bend" product – is profitable, then how is it that OneSteel can claim to be entitled to protection for an *internal part* of that value chain? It is to this proposition that we now turn.

Our client accepts that the views that it expresses on the financial picture presented by the application are in many respects conjectural. This is a symptom of the opaque nature of the Arrium/OneSteel management and corporate structures, and the redactions from and imprecise language of the application. However, whether conjectural or not, the Commission is requested to reasonably and carefully investigate what our client has to say about how that financial picture might have been painted.

NatSteel's concerns relate to the "costs" of materials going in to the business unit that manufactures

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38 *Ibid.*

39 *Ibid.*

40 *Ibid.*

41 *Ibid.*

rebar, and to the "price" of products going out of that business unit.

At the outset, we wish to point out that an Australian visit report has not been placed on the public record.[42] Such a report is a very important document for the purposes of investigations such as this. The fact there is not such a report on the public record, at day 172 of the investigation and at a time when the Commission has already arrived at a preliminary affirmative finding on the basis that it was necessary to require securities *"to prevent material injury to the Australian industry occurring while the investigation continues"* is a matter of concern to our client.

We can only surmise that the Australian industry visit took place sometime in November or December of last year. NatSteel requests the opportunity to see that visit report – in a suitably un-redacted and appropriately informative state – so that the facts, propositions and findings stated therein can be properly exposed and tested by it and other interested parties. If OneSteel is holding up the publication of that visit report, the Commission is requested to take matters into its own hands and publish what it perceives to be an appropriate non-confidential version on the public record immediately.

1 Costs of inbound materials

We start with the cost of billet that goes into the production of rebar.

In OneSteel's case, this appears to be based:

- mainly – but not wholly – on the cost of scrap and its conversion to billet by one Arrium business as transferred into the rebar manufacturing unit; and

- partly on the cost of steelmaking of billet from magnetite ores and its transfer by one Arrium business into the rebar manufacturing unit.

Billet is of course the raw material used in rebar production. According to statistics published in a recent US International Trade Commission report concerning rebar, billet constituted around 65% to 71% of the factory cost of US firms producing billet over the period from 2011 to 2014, as shown in the below

42 The PAD states that *"A report of the Commission's verification visit with the Australian industry will be available on the public record in due course."* See http://www.adcommission.gov.au/cases/documents/026-PADReport.pdf at page 25.

table:[43]

Rebar: Results of operations of U.S. firms, 2011-13, January-March 2013, and January-March 2014

Item	Calendar year			January-March	
	2011	2012	2013	2013	2014
	Ratio to cost of goods sold (*percent*)				
Raw materials	70.7	69.6	65.4	66.6	67.0
Direct labor	7.1	7.3	7.7	8.0	8.0
Other factory costs	22.2	23.1	26.9	25.4	25.0

Given that this very high proportion of the cost of finished rebar is comprised – unsurprisingly – of steel made from either iron ore or scrap, the examination of the cost of those materials is absolutely and critically important to the Commission's consideration of "injury". If those inputs were being purchased on the open market, then no question would arise as to the validity of the costs and their accounting treatment. But they are not so purchased by OneSteel. They are acquired internally.

The application informs the reader that:[44]

> *In the OneSteel rebar production, the steel billet used as input feed to the rod and bar mills that produce the rebar coil and straights is produced either via the integrated steelmaking route (from Whyalla) or, via the electric arc furnace route (from Sydney or Laverton).*

Further, we are told that:[45]

> *OneSteel uses its own iron ore to produce billets manufactured at its Whyalla steelworks and produces billets at Laverton and Sydney from purchases of steel scrap. The iron ore and steel scrap are sourced locally and account for the significant proportion of total raw material goods used in the rebar manufacturing process.*

It is apparent from other aspects of the application that OneSteel manufactures its own billet, using either its own iron ore or scrap, and that the scrap that it uses is collected and recycled by itself as well.

In the absence of an Australian industry visit report on the public record, we have available to us the visit report that was published in the ongoing rod-in-coil investigation. In that report it is confirmed that recycled steel and billets are supplied to OneSteel by "related companies". That visit report:

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43 See *Steel concrete reinforcing bar from Mexico and Turkey* - Investigation Nos. 701-TA-502 and 731-TA-1227 (Final), published October 2014. http://www.usitc.gov/trade_remedy/documents/pub4496.pdf

44 See application, at page 14.

45 *Ibid*, at page 15.

- expresses no opinion on the legitimacy of the cost of iron ore or of scrap steel, nor about the way in which OneSteel incorporates those costs into the production of billets;

- says this about the cost of scrap:[46]

> *OneSteel said that [REDACTED] is an independent supplier which the [REDACTED] is based on. The [REDACTED] price is based on the [REDACTED]. OneSteel said that its Sydney mill buys scrap metal from a central pool, which all recyclers (including [REDACTED]) contribute to and purchase from. OneSteel provided invoices between [REDACTED] and [REDACTED] and [REDACTED] to Laverton as well as documents evidencing the price negotiations for scrap metal.*

We do not know what this means. The quote appears to say that the "price" between the Arrium entities is based on an independent supplier price, but then says "the price is based on" again which suggests that there is another price basis or an extra element to the price basis. The position is not made clear, and we believe it should be.

What we do know is that there is no clear statement in the visit report which sets out the basis on which iron ore and scrap is internally transferred between related Arrium companies. Is this done at cost? If it takes place on a market price basis, then what is that market price? Does OneSteel demand that the transfer deliver what is effectively an internal profit within a consolidated group? But for the mere legal interposition of a separate company, one might expect iron ore and scrap steel to be just another cost, to be costed at cost, in an integrated production process.

We express concern about the lack of attention which apparently accompanies the consideration of these issues in the rod-in-coil report. The PAD Report in this matter shows a very significant upward movement in OneSteel's unit CTMS from FY2012/13 to FY2013/14. In circumstances of deteriorating iron ore and scrap steel prices in international markets, why have OneSteel's costs increased? If there is a currency factor in the way that OneSteel costs its inputs, what is the validity of that factor when OneSteel mines its own iron ore in Australia in Australian dollars and collects scrap steel (presumably part of its requirement) in Australia in Australian dollars? If it has a natural advantage by reason of its vertical integration, is that natural advantage being smoothly applied throughout its entire process or is OneSteel deciding for itself where it should earn its profits, to the detriment of that "slice" of its business which constitutes rebar manufacturing? Could OneSteel acquire its iron ore, scrap steel or billet on the open

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46 See *Rod in coils – Investigation 240 – Australian Industry Visit Report – OneSteel Manufacturing Pty Ltd.* http://www.adcommission.gov.au/cases/documents/037-VerificationReport-AustralianIndustry-OneSteelManufacturingPtyLtd.pdf at pages 28-29.

market more cost-effectively than the cost it records in its accounts for its internal transfer of those input products?

2 Prices of outbound goods

Next we turn to a consideration of the "price" of rebar. The application downplays the fact that by far the largest part of OneSteel's "sales" is in fact either internal transfers between business units or intercompany transfers. There is no comparative data to give the reader an idea of the extent of OneSteel's captive or tied "sales", in comparison to its sales at market prices to independent parties. From information received from various sources, we believe it to be the case that OneSteel commands [CONFIDENTIAL TEXT DELETED – number]% of the total domestic market for rebar, and that it sells [CONFIDENTIAL TEXT DELETED – number]% of that volume to the market through its own business unit/related party network. This leads us to ask – what is the transfer pricing convention that OneSteel applies in its accounting records to "value" its rebar sales?

In its application, OneSteel has apparently redacted a great deal of the text about how it goes about determining pricing when selling to what it refers to as the "market", which in its case involves transfers to itself and sales to some independent customers. The text has been replaced with the words *"detail on determining pricing".*[47] In so doing, OneSteel has foregone an opportunity to testify that it treats independent customers in the same way as it treats its so-called *"external service centres"* – which are fully related parties within the one, consolidated group.

Again, in the absence of an Australian industry visit report, we turn to other available resources in an effort to work out how OneSteel prices rebar when it transfers it within its business units and/or 100% related companies.

In the Australian industry visit report in the parallel rod-in-coils investigation, we discern the following:

(a) that transfer prices are not negotiated – instead:

> *…orders for related OneSteel customers are placed using an internal order system (SAMS). Upon receipt of the order, OneSteel enter the order into its Newproms production order system and issues an order acknowledgement, whether that is via the internal system or fax/email*

(b) that OneSteel employs a price mechanism called an "import parity price" plus a local premium,

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[47] See application, at page 17.

the method of determination and operation of which is entirely redacted;

(c) that OneSteel's customers receive [redacted], which one might think is a redaction of the word "discount" and/or "rebate", however why it is necessary to redact the fact that rebates are paid is not at all clear to us;

(d) that OneSteel's "internal" customers have monthly pricing that [redacted], which might suggest that there are no rebates, or might suggest the contrary;

(e) that OneSteel maintains that its non-negotiated, IPP plus premium prices to its related entities are:

> *…not at a transfer price but are true 'sales' of the goods at an arm's length price.*

On the basis of the above, the Commission stated:

> *In light of the above, we do not consider that there is evidence that suggests that prices to OneSteel's internal customers are not arm's length or affected by the relationship with OneSteel.*

There is nothing in the passages which precede this finding in the public record version of the Australian industry rod-in-coil report that justifies this finding. Even putting to one side our client's huge concern about the degree of the redactions from that report, it is respectfully suggested that the Commission itself should justify a finding such as this with an explanation. The suggestion that internal transfers are true sales, and the fact that the underpinning for this view is not openly explained, are matters of extreme concern to NatSteel. Basing findings about injury on non-market based information is not an appropriate approach to adopt. How OneSteel chooses to organise its internal affairs cannot prove its case. The Commission should ask OneSteel about its motivations as well as about its policies. In the context of Section 269TAE(2A) of the Act, this is a matter of great significance in this case:

> *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:*
>
> *…*
>
> *(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
>
> *…*
>
> *and any such injury or hindrance must not be attributed to the exportation of those goods.*

We are particularly concerned about what the "pricing" to these "internal customers" looks like in comparison to prices to independent parties because the redactions in the rod-in-coils Australian industry visit report about OneSteel's discounting and rebate practices suggest that there are differences, and because industry intelligence suggests that OneSteel's prices to independent parties escalated steadily (almost continually) during the POI.[48] NatSteel requests an explanation from the Commission in relation to the redactions relating to OneSteel's internal transfers. If the pricing was no different to that employed in relation to its sales to independent parties, then there would be no need for all the secrecy. The Commission should require OneSteel to allow a more plain and straightforward explanation to be provided, and should resist any attempts on OneSteel's part to suppress the debate about how OneSteel's competitive practices impact upon its claimed injury.

In G of this submission we highlight the commercial strategy that OneSteel appears to employ in order to maintain its dominance of the ultimate processed rebar market ("cut and bend") in Australia. We ask the Commission to consider the implications of any of these scenarios, should they be borne out by the facts:

(a) differential pricing to related parties as compared to independent parties, such that the latter are typically higher and therefore make those independent parties less competitive or indeed uncompetitive with OneSteel's related party entities in the processed rebar market;

(b) failure on OneSteel's part to compete for volume in relation to its sales to independent parties, by overpricing its rebar to those parties and therefore losing sales as a result;

(c) the potential for OneSteel to use of information gained from related party rebar sales (prices, volumes, rebar types, geographical locations) together with information gained by OneSteel's related party entities about processed rebar sales, to assist its downstream processing entities to predict and adjust to expected competition from independent parties; and

(d) profitability of OneSteel Distribution, or whatever entity or entities it is that OneSteel segregates as its downstream processing segment, in circumstances where its rebar manufacturing

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48 We note that OneSteel claims, in its letter to the Commission dated 2 December 2014 in response to submissions made by Daehan Steel Co., Ltd and Stemcor Australia Pty Ltd, that it does not utilise a price list for sales of rebar (at para 3.7). This is not correct, at least in so far as the POI was concerned. We refer the Commission to clause 3(d) of the letter of agreement set out in Attachment 1 **[CONFIDENTIAL ATTACHMENT]**.

segment is not profitable.

It is submitted that the conditions of competition in the OneSteel-dominated rebar market in Australia are an important aspect of this case. The Commission is asked to consider this in its further deliberations, and to report to interested parties in a way that is rational and informative.

G OneSteel's market dominance and business strategy

1 Market power

OneSteel holds a very substantial share of the steel reinforcing bar market.

The diagram below, derived from OneSteel's application, has been augmented by our client, based on its industry and market knowledge, to illustrate to the Commission the breakdown of market share of the entities which populate each level of the Australian rebar distribution market.

[CONFIDENTIAL CHART DELETED – NatSteel estimates of market shares]

Arrium/OneSteel maintains a 100% share of Australian manufacturing of steel reinforcing bar. It supplies [CONFIDENTIAL TEXT DELETED – number]% of the Australian market for rebar, [CONFIDENTIAL TEXT DELETED – fraction] of which is also held by it through its "reinforcing fabricators and steel service centres". These are internal business units and/or 100% related entities of the one company. They process and sell the downstream "cut and bend" product, although they might also sell the like goods themselves (ie without further processing).

The remaining suppliers to the market are the independent suppliers (independent of OneSteel), which includes BlueScope Steel.[49] Those independent parties may also be supplied by OneSteel, and not wholly or solely by imported product, and if so such OneSteel supply would take place pursuant to its standard form Distribution Agreement, the form and tenor of which is further discussed below.

NatSteel has already questioned the Commission about the "prices" provided by OneSteel at the manufacturing level to OneSteel's own distribution outlets, and we trust that the Commission's consideration of the comparative treatment of its related entities and unrelated parties will provide

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49 It should be recalled that during the POI a very large proportion of rebar supplied to the market by "Other independents" was actually BlueScope supply of New Zealand sourced rebar. Indeed, imports from New Zealand constituted the largest proportion (21.83%) of all import sources during the period of investigation – but are not under investigation.

greater clarity and certainty to the key issues raised by this investigation. Again, we remind that this is for the purposes of understanding the conditions of competition in the market, and to ensure that injury caused to OneSteel's *rebar manufacturing* – according to its accounting records – is not attributable to its desire to command the *processed rebar* market. This desire could be fulfilled by restricting the availability of locally produced and competitively priced rebar to independent parties, who are thereby made less competitive against OneSteel in the downstream processed rebar market, forcing them to rely on imported rebar and exposing them to investigations such as this.

We ask the Commission to inquire as to whether independent fabricators and service centres are treated on an equal footing to OneSteel's reinforcing fabricators and steel service centres. This is not just a matter of "price". The entire value relationship between Arrium's steel making and steel melting, through its manufacturing arm and then into its processing and distribution arms for supply to the ultimate consumer, and the internal accounting treatment of those multiple relationships, needs to be considered.

2 OneSteel's use of its market power

OneSteel has substantial power in the market for the goods under consideration and in the markets for the downstream products made from those goods. One of the instruments it uses in its commercial relationships in the market is the form of distribution agreement with which it contracts with independent parties.[50]

We would assume that OneSteel has provided a copy of its standard form Distribution Agreement, or of copies of example Agreements in force, as part of its application in this matter. An examination of OneSteel's sales arrangements will be important in the Commission's consideration of many of the issues raised in this submission.[51]

NatSteel refers the Commission to clause 3.1, Attachment 2 – Market Offer in OneSteel's standard Distribution Agreement. That clause states as follows:

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50 This submission does not presently allege a misuse of market power as prohibited by section 46 of the *Competition and Consumer Act 2010* (Cth) on the part of OneSteel. The evidence available to our client is incomplete and such a conclusion would require consideration of more information than is presently known to NatSteel. NatSteel's request is that the Commission investigate such matters and come to its own conclusions about the distortions that such conduct – if it exists – might cause, and the implications of that for OneSteel's injury claims.

51 In case it has not been provided, please see Attachment 1 **[CONFIDENTIAL ATTACHMENT]** to this submission.

[CONFIDENTIAL TEXT DELETED – condition of commercial agreement used by OneSteel which relates to pricing]

The clause *expressly does not require* OneSteel to supply independent parties with products at the same price as it supplies its own business units. The clause states that prices offered will be competitive with the prices offered to other independent parties. It is worthwhile dwelling on this aspect. If prices were established by market conditions, it would not be necessary for OneSteel to exclude itself from pricing at the level that [CONFIDENTIAL TEXT DELETED – number]% of the market enjoys. If OneSteel's processing and distribution arms (its "reinforcing fabricators and steel service centres") are true customers, as OneSteel asserts, then why do they enjoy a carve-out from the price conditions that OneSteel applies to the rest of the market?

The clause gives further force to NatSteel's request that the Commission investigate where it is in OneSteel's own internal structures that it chooses to earn profit or minimise its losses. Is it the case that OneSteel's intends to promote the viability or profitability of its steel manufacturing and/or its processing and distribution ahead of that of its rebar manufacturing? Is there a strategy to limit the ability of independent parties to compete with OneSteel's reinforcing fabricators and steel service centres by subtle price controls and other contractual requirements under the Distribution Agreement?

The price clause is not the only competition-related mechanism of note in the Distribution Agreement. Attachment 1 of the OneSteel standard form Agreement states:

[CONFIDENTIAL TEXT DELETED – condition of commercial agreement used by OneSteel which relates to volume to be purchased]

Our client asks the Commission to examine OneSteel's Distribution Agreements in this light as well. The insistence on almost total loyalty at discretionary prices which do not have to be the same as the supplier itself enjoys within its own related party network has obvious implications in a competitive sense. The Commission should consider whether it is plausible that OneSteel's business behaviour is aimed at or has the effect of driving prices up and reducing competition in the ultimate end-user market.[52]

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[52] Importantly, if OneSteel makes a choice not to supply its product to any independent customer that cannot meet the volume requirements, it is self-injuring itself. Axiomatically, it could increase its throughput and market share if these volume requirements were not imposed.

Exclusive dealing is prohibited under Section 47 of the *Competition and Consumer Act 2010* (Cth).[53] In short a corporation engages in the practice of exclusive dealing if the corporation supplies, or offers to supply, goods or services on the condition that the person to whom these are supplied will not, or will not except to a limited extent, acquire goods or services directly or indirectly from a competitor; for the purpose of substantially lessening competition.

The ACCC website states:

> *Broadly speaking, exclusive dealing occurs when one person trading with another imposes some restrictions on the other's freedom to choose with whom, in what, or where they deal. Most types of exclusive dealing are against the law only when they substantially lessen competition, although some types are prohibited outright.*[54]

The requirement under OneSteel's Distribution Agreement that independent customers must buy a very significant proportion of their total supply from OneSteel should be considered in the wider market circumstances and in the context of OneSteel's industry and market power. Failure on the part of the customer to buy that significant proportion from OneSteel results in a refusal to supply the customer.

Assuming that OneSteel's Distribution Agreements are generally in a standard form, and incorporate the [CONFIDENTIAL TEXT DELETED – number]% requirement, then the effect is that if independent parties want to secure supply from OneSteel they have to pledge to buy almost all of their requirement from their major downstream competitor. Clearly, independent parties find themselves in an invidious position.

It cannot be doubted that any competitor wants to achieve high prices. It is the role of competition policy to promote fair competition so that price is representative of true market conditions. No doubt OneSteel wants to achieve high prices. Whether that higher price is at the billet level, or the rebar level, or at the processed product level, is not ultimately relevant. OneSteel is in a position to exert pressure on independent parties through its dominance of the value chain for rebar and its downstream processed products in order to achieve both market share and ultimately higher prices.

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[53] This submission does not presently allege exclusive dealing as may be prohibited by the *Competition and Consumer Act 2010* (Cth) on the part of OneSteel. The evidence available to our client is incomplete and such a conclusion would require consideration of more information than is presently known to NatSteel. NatSteel's request is that the Commission investigate such matters and come to its own conclusions about the distortions that such conduct – if it exists – might cause, and the implications of that for OneSteel's injury claims.

[54] See https://www.accc.gov.au/business/anti-competitive-behaviour/exclusive-dealing

To reiterate – our client submits that the Commission cannot obtain a proper appreciation of the market and of prices if it is the case that the behaviour of the major player in the market is not conditioned by the operation of a competitive market. Forcing prices of rebar to independent parties to increase, and stripping them of supply where onerous volume requirements need to be met, means that they must seek competitive supply elsewhere. If OneSteel is preventing open competition in the market place and is not setting its prices equally and on a market basis, then true price observations for the purposes of an injury analysis are not available to the Commission. It does not matter whether there is or is not any dumping of the imported goods. In the situation we have described the conditions of competition are such that price is not the driver of competition. If that is the case, a finding that the price of imports has caused injury cannot safely be arrived at by the Commission.

To again quote from the ACCC website:

> *A business with a substantial degree of market power in a market is not allowed to use this power for the purpose of eliminating or substantially damaging a competitor or to prevent a business from entering into a market.*[55]

NatSteel requests that the Commission adjust its consideration to take into account the market distortions that OneSteel's dominance causes in the Australian market. Costs of production – of billet and of rebar – should be actual costs. If billet could be acquired more cheaply on the market, then the additional cost the OneSteel faces in producing its own billet is self-injury and is not injury caused by dumping. Any inefficiencies in that production – and we have already pointed out the degree of inefficiency in this case – must be considered as a form of injury unrelated to alleged dumping. Internal "prices" of rebar when transferred to OneSteel's downstream processing segment need to be scrutinised and compared with prices to independent parties. Improved viability or profitability of other segments in the value chain should be smoothed over that whole value chain. Refusal to supply – by requiring **[CONFIDENTIAL TEXT DELETED – number]**% supply loyalty at discretionary prices - should be considered as a form of self-injury. Rebar prices that are not arrived at by the normal forces of supply and demand cannot form the basis of any injury finding. We would think that this is especially the case where the party found to be responsible for the abnormality is the applicant itself.

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55 See https://www.accc.gov.au/business/anti-competitive-behaviour/misuse-of-market-power. This submission does not presently allege a misuse of market power as prohibited by section 46 of the *Competition and Consumer Act 2010* (Cth) on the part of OneSteel. The evidence available to our client is incomplete and such a conclusion would require consideration of more information than is presently known to NatSteel. NatSteel's request is that the Commission investigate such matters and come to its own conclusions about the distortions that such conduct – if it exists – might cause, and the implications of that for OneSteel's injury claims.

The anti-dumping system and the resources of the Commission are not there to be exploited in a business strategy if it is shown to be transparently anti-competitive.

H Conclusion

In conclusion, our client strongly submits that OneSteel has not suffered material injury in the form of allegedly dumped exports of steel reinforcing bar from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey, and that because of OneSteel's market behaviour the Commission cannot gather reliable evidence together to establish the proposition that such injury has been caused.

In summary, our client submits that:

- OneSteel is an inefficient producer of steel reinforced bar.
- OneSteel has not adequately invested in its steel making business. Instead, it has focussed heavily on its iron ore mining segment to the detriment of its steel business.
- OneSteel has an integrated extraction, steel making, manufacturing, processing, and distribution chain. The cost interactions between different arms of that value chain, and the way in which they are represented in Arrium/OneSteel's financial accounts, must be carefully scrutinised for legitimacy and relevance from the anti-dumping perspective.
- OneSteel's business model is causative of conditions that reduce competition in the Australian market and which distort prices for rebar. Injury caused by reason of its attempts to bolster profitability of its overall value chain at the expense of its manufacturing segment should not be attributed to any alleged dumping.

Daniel Moulis
Principal