

18 September 2015

Mr Tim King
Investigator
Anti-Dumping Commission
Level 35
55 Collins Street
MELBOURNE CITY VICTORIA 3000

For Public File

Dear Mr King

Investigation into Steel Reinforcing Bar Case 264 – exporter visit report for NatSteel Holdings Pte. Ltd and importer visit report for Best Bar Pty Ltd and NatSteel Australia Pty Ltd

Introduction

The Anti-Dumping Commission (“the Commission”) has recently placed the verification visit report for NatSteel Holdings Pte. Ltd (“NatSteel”) on the public file.

OneSteel Manufacturing Pty Ltd (“OneSteel”) has reviewed the verification visit report for NatSteel along with the recently published Statement of Essential Facts (“SEF”) for Investigation 264 and urges the Commission to review the following aspects in relation to the verification conducted.

Natsteel Holdings Pte. Ltd:

1. Ordinary Course Of Trade

OneSteel notes the following comments of the Commission (Section 8.5):

“As set out in Section 3.2.3, it was explained to the Commission that during the period of investigation, NatSteel imported rebar to satisfy the domestic market while it was upgrading its furnace and rolling mill. It was also explained that NatSteel’s accounting system assigned identical codes to imported rebar and rebar that was manufactured by NatSteel. As a result, the Commission was unable to determine the cost of goods, that is, the cost of production or manufacture of domestic sales, pursuant to Regulation 43(2) of the Customs (International Obligations) Regulation 2015 (Customs Regulation).”

NatSteel’s position concerning its costs were further commented upon by the Commission at Section 11:

“For the purposes of this investigation, NatSteel was unable to differentiate in its recording system which costs related to imported bar and which costs related to its own production”.

It is inconceivable to OneSteel that any steelmaking operation producing steel in accordance with a quality management system would not endeavour to maintain basic traceability of externally sourced goods in its accounting/recording systems.

Traceability is fundamental to ensuring any customer complaints relating to non-conforming product can be adequately addressed – particularly in the case of sales of externally sourced goods. Evidence of traceability is also a key assessment criteria for ACRS¹ [Australasian Certification Authority for Reinforcing and Structural Steels] certification which NatSteel has obtained.

The Australian customer of NatSteel, Best Bar, further attests to the importance of traceability as documented in the importer visit report:

“Best Bar stated that during the production process, traceability is very important, particularly [CONFIDENTIAL INFORMATION DELETED – example of scenario where traceability is very important and explanation as to how traceability is achieved]. Best Bar developed this traceability process that distinguishes it from its competitors.”

Given the importance that Best Bar ascribes to traceability, OneSteel is unable to reconcile that Best Bar would purchase goods from NatSteel Singapore without the assurance that the source of the goods are clearly established.

OneSteel notes that in the absence of differentiation of produced and purchased goods in the NatSteel systems, the Commission was unable to determine NatSteel's normal values under s.269TAC(1) as it could not determine whether NatSteel's domestic sales were made in the ordinary course of trade. The Commission, however, decided to determine NatSteel's normal values under s.269TAC(2)(c) – using the constructed cost methodology. OneSteel submits that this method is also “unsafe” as the Commission has agreed with NatSteel that it could not “differentiate in its recording system which costs related to imported rebar and which costs related to its own production”.

NatSteel's costs do not reflect the actual costs to produce rebar by NatSteel during the investigation period. The costs are tainted via the inclusion of imported rebar costs. Therefore, the conclusion that the cost to make and sell information supplied by NatSteel is unreliable is inescapable. Applied here, the Commission is duty-bound to recommend to the Parliamentary Secretary that the information ought properly be considered unreliable and disregarded under s.269TAC(7). To not do so would put the Parliamentary Secretary's decision at risk of legal challenge on the basis that having regard to such patently and obviously inaccurate and unreliable information indicates that the Parliamentary Secretary has taken into account matters which are irrelevant to its consideration, or their veracity are so unreasonably tainted by doubt, that no reasonable decision maker would have taken such matters into account. OneSteel would further submit that the profit applied by the Commission under Regulation 45(3)(c) is also unreliable as any sales that were made in the period could not have been properly compared with the unreliable costs for that period.

OneSteel contends that the Commission is unable to determine normal values for NatSteel under either of the s.269TAC(1) or s.269TAC(2)(c) provisions. In the

¹ Pg 13 Par 1 of the ACRS Product Certification Scheme Rules states: “The Authority (ACRS) owns and administers a not-for-profit, third-party product certification and technical approvals scheme that covers reinforcing steels, general steels and related products that are supplied in accordance with the Certification Requirements. This is achieved with a strong emphasis on process control, product testing and materials **traceability**.”

absence of sufficiently detailed export price information for NatSteel's exports to third countries, the Commission must determine normal values for NatSteel under s.269TAC(6) using the best available information.

The Commission has recognised that it does not have sales data relating to domestic sales by other sellers in Singapore.

In light of the circumstances concerning the reliability of NatSteel's sales and cost data throughout the investigation period, OneSteel does not consider that normal values for NatSteel can be determined using the company's information. By its own admission, the cost (and sales) data for NatSteel includes sales and costs associated with imported rebar.

OneSteel proposes that the Commission base normal values for NatSteel under s.269TAC(6) based upon the information contained in OneSteel's application, with adjustments as per those identified in Section 11 of the NatSteel verification report (with the exception of the adjustments discussed further below).

2. Clarification of export sales

OneSteel notes the Commission's comments concerning certain sales that were classified as export sales (NatSteel verification report, at p. 7). However, it appears that subsequent to the verification visit, NatSteel has sought to clarify the nature of these sales. The Commission has indicated that it "*may reassess these sales to the extent that they are relevant to the investigation.*"

The Commission is urged to exercise caution in classifying the goods as domestic sales unless it can be sufficiently established that the goods were sold for domestic consumption in Singapore. OneSteel considers the Commission must be satisfied as to the nature of the sales – as it is likely that any re-classification of the goods as domestic sales will impact NatSteel's normal value determination.

3. Like Goods clarification

The NatSteel verification visit report states that during the verification visit, NatSteel informed the Commission about the following:

- "*All the rebar that it manufactures are made to the AS/NZS4671:2001 standard.*"
- "*In Singapore, the prevailing standard is the SS2:1999 (Specification for Steel for the reinforcement of concrete).*" "*NatSteel produces rebar products, generically called [CONFIDENTIAL INFORMATION DELETED – internal designation] that meets the SS2.*"

These two statements are inconsistent. It is unclear whether all rebar made by NatSteel was made and specified to the AS/NZS4671:2001 standard or a combination of the Australian and Singaporean standards.

OneSteel draws the Commission's attention to the statement that "NatSteel considers that the AS/NZS4671:2001 standard is a higher standard than the SS2 when it comes to, for example, yield stress. The SS2's yield stress is a maximum of 500N/mm², while the AS/NZS4671:2001 requires a minimum of 500N/mm². This statement is incorrect. For a grade 500 rebar, both standards specify a minimum yield stress requirement of 500N/mm² as evidenced in the adjacent extract of rebar grades produced which appears in the NatSteel product brochure available on their website.

Grade 500

Specifications	Grade	Yield min (N/mm ²)
SS2: 1999	500	500
SS 560: 2010	B500B	500
BS 4449: 2005 +A2: 2009	B500B	500
AS/NZS 4671 : 2001	500N	500 - 650

Further, it is important to note that the NatSteel product brochure shows that along with grade 500 rebar, NatSteel also makes a number of other grades of rebar to a variety of standards namely, SS2:1999 (grade 300), BS 4449:1997 (grade 460 and grade 250) and AS/NZS 4671:2001 (grades 250N and 300E). Refer below.

Others

Specifications	Grade	Yield min (N/mm ²)	Tensile min (N/mm ²)
SS2: 1999	300	300	330
BS 4449: 1997	460	460	Y*1.08
	250	250	Y*1.15
AS/NZS 4671 : 2001	250N	250	Y*1.08
	300E	300 - 380	Y*(1.15-1.50)

OneSteel submits that NatSteel has misrepresented all its domestic sales as being of an equal equivalence to the requirements of AS/NZS4671:2001 grade 500N when

NatSteel's own rebar product brochure shows a variety of other grades of rebar with yield strengths of 250, 300 and 460N/mm² also being produced by NatSteel.

Whilst OneSteel accepts that NatSteel may have provided the Commission with mill certificates for certain domestic sales of rebar, OneSteel is concerned that it appears that the Commission has readily accepted NatSteel's position and determined that "*all rebar products sold by NatSteel are like goods for the purposes of this investigation*" without further challenging the exporter on this issue.

It is further noted in the NatSteel verification report (at p. 11) that:

"NatSteel informed the Commission that all rebar sold in the domestic market, like the goods exported to Australia, were made to a 500 grade. The Commission determined that NatSteel's proposed model-matching was reasonable as it was based on shapes and diameter."

OneSteel is concerned that the ready acceptance of NatSteel's claims has resulted in the inclusion of under-specified domestic sales of rebar with yield strengths less than the AS/NZS4671:2001 grade 500N requirements. The impact of the inclusion of these domestic sales is to reduce the normal value for NatSteel through the inclusion of 250, 300 and 460N/mm² yield strength rebar.

OneSteel contends that the Commission is required to make the assessment as to whether the goods sold domestically by NatSteel meet the requirements of AS/NZS4671:2001 grade 500N, and not NatSteel. OneSteel requests the Commission to examine **all** of NatSteel's domestic sales and further assess whether the domestic sales do meet the requirements of AS/NZS4671:2001 grade 500N.

4. Normalisation adjustment

The Commission has afforded NatSteel a "normalisation adjustment" which it is assumed relates to certain costs associated with the upgrade activities undertaken by NatSteel in 2013.

There is a reference to NatSteel's costs having "stabilised" following the "*a drop in production levels*".

This is a highly unusual adjustment claim and one which OneSteel does not consider warrants an adjustment. As upgrade activities (and furnace refractory repairs) are undertaken by all steelmaking operations from time to time as required, this must be considered as occurring in the normal ebb and flow of business. The Commission is requested to examine whether the normalisation adjustment is indeed justified and if so, clarify the nature of the adjustment made to CTMS in this regard.

Indeed, this so called "normalisation adjustment" fails the threshold requirement for the making of an adjustment to the normal value, namely, price comparability.

The WTO Disputes Settlement Panel in *US — Softwood Lumber V* considered that there is no requirement to adjust for any and all differences but rather only those differences demonstrated to have affected the price comparability:

"We consider that Article 2.4 (of the WTO Anti-dumping Agreement) does not require that an adjustment be made automatically in all cases where a difference is found to exist, but only where — based on the merits of the case

— that difference is demonstrated to affect price comparability. An interpretation that an adjustment would have to be made automatically where a difference in physical characteristics is found to exist would render the term ‘which affect price comparability’ nugatory. Further, such an interpretation would make little sense in practice, as not all differences in physical characteristics necessarily affect price comparability.”²

Applied here, OneSteel fails to see how “upgrade activities (and furnace repairs)” which are depreciated across all production, regardless of end-market (ie. domestic or export) can be said to affect price comparability between the goods sold in the domestic Singaporean market and the price of goods exported to Australia. This is a development in the interpretation of the WTO Agreement that is without precedent and any jurisprudential basis, and should be refused by the Commissioner.

5. Selling, General and Administration (“SG&A”) expenses

NatSteel’s allocation of selling and general administration costs requires closer scrutiny. The allocation of certain costs that may be explained as relating to export sales may be disguised as such when in fact these corporate centre costs relate to very little export activity. Given NatSteel’s value-added (cut & bend rebar) products associated with their “prefabricated reinforcing solutions” and services accounted for about 85% of NatSteel’s sales mix in Singapore, with the remaining 15% made up from sales of plain steel bars in November 2014³, it is important that the SG&A expenses associated with plain steel bars or coils ie. the goods, are differentiated from the SG&A expenses associated with sales of further processed rebar.

It is unusual for SG&A expenses to be dissected in the manner referred to at Section 7.3 of the NatSteel verification report. OneSteel urges the Commission to re-assess NatSteel’s claims for allocating corporate centre costs and certain other expenses between domestic (further processed versus as-rolled) and export sales, and ensuring that the costs referred to are correctly identified and allocated.

6. Theoretical/actual weight sales

NatSteel sells domestically on a theoretical weight basis and for export on an actual weight basis. Section 10.1.5 of the verification report indicates that NatSteel reasoned that NatSteel’s pricing methodology takes account of the weight difference on the domestic market.

OneSteel gains no confidence from NatSteel’s arguments that the price difference on the domestic and export markets is addressed by NatSteel in its “pricing methodology” that the Commission appears to have accepted.

The Australian Standard AS/NZS 4671:2001 specifies $\pm 4.5\%$ mass per meter tolerance irrespective of nominal diameter. The Singapore standard SS2:1999

² UNITED STATES – FINAL DUMPING DETERMINATION ON SOFTWOOD LUMBER FROM CANADA (WT/DS264) WT/DS264/R (13 April 2004), para. 7.165

³ [REDACTED]

specifies $\pm 5\%$ mass per meter tolerance for rebar 10-22mm diameter and $\pm 4\%$ for all diameters greater than 22mm. Applying a conservative rolling tolerance, it is not unreasonable to expect that for the domestic market, the offset for theoretical versus actual weight sales would be in the order of 3% (for a 100t order, the sales quantity supplied on theoretical weight basis would be 97t).

OneSteel contends that an upward adjustment to NatSteel's normal value is required (of approximately 3 per cent) to account for the difference in the lower weight domestic sales when contrasted with higher weight export sales.

7. Level of Trade Adjustment

It is stated by the Commission that there were four types of customers on the domestic market in Singapore for NatSteel – end users, fabricators, resellers and traders. It is further stated that “*NatSteel provided graphs showing consistent patterns of price differences based upon a model by model basis*”. OneSteel would expect prices to vary on a model to model basis. What is not clear is whether this pricing differential was verified by the Commission on “a sale to customer by model basis”.

OneSteel requests that the Commission revoke the adjustment to NatSteel for level of trade differences as it has not been demonstrated that price differentials exist for the goods sold via different distribution channels in Singapore.

Relationship between exporter and importer

It is concerning to OneSteel that the Commission does not appear to have given due consideration to the relationship between the exporter, NatSteel Singapore and the Australian importer/s Best Bar, Best Bar Victoria and NatSteel Australia (collectively referred to as “Best Bar” as per the importer visit report).

OneSteel previously brought to the Commission's attention in a letter dated 15 July 2015 (item 58 on EPR264), the relevant fact that until 25 September 2014, Best Bar was a subsidiary of NatSteel Singapore (NatSteel Holdings Pte. Ltd⁴). Given that a significantly lower (17%) corporate tax rate applies in Singapore compared to Australia (30%), the basis for establishing pricing for export transactions between these parties (related parties for the POI) ought to have been given due consideration.

Despite the reassurance by Best Bar to the Commission (Section 3.4 of Best Bar visit report) that although related to NatSteel, “*transactions between the various parties are conducted on an arms-length basis...[i]t advised that its rebar business was profitable*”, unless the Commission can demonstrate how it tested the accuracy of this statement, then OneSteel submits that NatSteel and Best Bar cannot reasonably have reversed the view that “price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller” under paragraph 269TAA(1)(b).

⁴ Refer Tata Steel Annual Report 2013-2014, <http://www.tatasteel.com/investors/annual-report-2013-14/annual-report-2013-14.pdf>, p195, where it states that NatSteel Holdings Pte. Ltd (either directly or subsidiaries) owned 71% of Best Bar Pty Ltd. , 71% of Bestbar (Vic) Pty. Ltd and 100% of NatSteel Australia Pty. Ltd.

Further, it is not obvious to OneSteel whether or not the sales by the importer, Best Bar into the Australian market were profitable. The Commission notes in its Visit Report:

“we calculated revenue for each selected transaction using the ratio of rebar revenue to quantity sold. However, we did not consider it was appropriate to use these revenue figures to calculate the profitability of the selected shipments as we did not have [CONFIDENTIAL INFORMATION DELETED – particular costs].”

This suggests that the Commission’s view around Best Bar’s profitability was not properly and reasonably considered by testing the profitability of sales of the imported goods (whether in the condition in which they were imported **or otherwise**)⁵. If so, the Commission appears to have failed to discharge its obligation to be satisfied that the conditions under paragraph 269TAA(2)(b) have been met, which provide, *inter alios*:

“(2)... where:

...(b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported **or otherwise**) **at a loss**;

“the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.” **[emphasis added]**

In other words, the Parliamentary Secretary must be advised of her responsibility under paragraph 269TAA(1)(c) to not consider the relationship between the importer and exporter as arms-length in nature, given that the Commission appears to have not tested the profitability of the imported goods, and those goods processed from the imported goods.

The NatSteel and Best Bar visit reports detail further instances where pricing related inconsistencies were established by the Commission. The visit team in the NatSteel verification reported that “*The payment term indicated in the invoices and Export Sales spreadsheet was [CONFIDENTIAL INFORMATION DELETED – payment terms]. On closer inspection, the visit team observed that actual payment dates were [CONFIDENTIAL INFORMATION DELETED – different] than the [CONFIDENTIAL INFORMATION DELETED – payment terms] noted on the invoice. On this basis, the visit team calculated an export credit amount.*”

The Best Bar verification team on review of the (revised) importer transaction form considered that the estimate of insurance “*is overestimated and revised the importer transaction form using the ocean freight and insurance costs from [CONFIDENTIAL INFORMATION DELETED - source].*”

These inconsistencies further reinforce with OneSteel the view that the conditions under paragraph 269TAA(1)(c) have been satisfied and the Parliamentary Secretary ought properly hold the opinion that “the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price”.

⁵ Paragraph 269TAA(2)(b) refers

Conclusions

The NatSteel verification has established that NatSteel's selling prices and costs cannot be relied upon for the purposes of determining normal values as NatSteel's sales and cost data includes sales and cost data that relates to imported rebar that cannot be quarantined in NatSteel's cost records.

It is OneSteel's contention that NatSteel's normal values must therefore be determined under s.269TAC(6) using the information provided in OneSteel's application for rebar, as this is considered to be the best available information to the Commission. Adjustments to NatSteel's normal values can be made to reflect the cost differentials (that can be evidenced and are unaffected as to whether they relate to domestic or imported rebar).

OneSteel does not consider that an adjustment for level of trade differences can be justified as selling price differentials by model and customer have not been evidenced by NatSteel. The Commission is also urged to review the SG&A expenses allocation for corporate centre costs and certain other expenses between domestic and export sales.

OneSteel considers that an upward adjustment of 3 per cent to NatSteel's normal value is required to account for the difference in domestic sales sold on a theoretical weight basis versus exports on an actual weight basis.

Finally, OneSteel requests that the Commission review the assessment of the nature of related party sales between NatSteel and Best Bar to establish whether these have indeed been conducted at arms-length.

If you have any questions concerning this letter please do not hesitate to contact OneSteel's representative Mr John O'Connor on (07) 3342 1921 or Mr Matt Condon of OneSteel on (02) 8424 9880.

Yours sincerely



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