

5 February 2016

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By email

Dear Senior Member

Review of Ministerial decision – steel reinforcing bar Interested party submission of Best Bar Pty Ltd

We refer to the application for review that was lodged on behalf of Best Bar Pty Ltd (“Best Bar”) on 21 December 2015. As a consequence of that application, a review has now been initiated to consider, *inter alia*, whether imports of rebar from Singapore caused material injury to the Australian industry producing like goods – OneSteel Manufacturing Pty Ltd (“OneSteel”).

In accordance with its rights as an interested party under Section 269ZZJ of the *Customs Act* 1901 (“the Act”) Best Bar wishes to supplement its application for review by way of the comments contained in this submission.

Specifically, as per Best Bar’s application, this submission will address the following findings:

- Finding 1 – that rebar from Singapore caused OneSteel to lose sales volume and market share;
- Finding 2 – that rebar from Singapore caused OneSteel to suffer injury in the form of price suppression;
- Finding 3 – that the volume and prices of imported like goods that were not dumped did not cause injury to OneSteel; and
- Finding 4 – that it was appropriate to consider the cumulative impacts of imports from Singapore with imports from Korea, Spain and Taiwan.

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

Best Bar considers that the finding that its imports caused injury to OneSteel in the form of loss of sales volume and loss of market share was not the correct or preferable decision. Best Bar's submission in this regard may be summarised as follows:

- 1 OneSteel was found to have suffered a 4.3% decrease in sales volume which resulted in a 3.7% decrease in market share.
- 2 Best Bar was the only importer of Singaporean rebar.
- 3 Best Bar does not, in the usual course of business, sell rebar in the form in which it was imported.
- 4 The only link between imports of rebar from Singapore and OneSteel's rebar is that Best Bar could have potentially purchased rebar from OneSteel. Other than this, imports of rebar from Singapore do not compete with OneSteel's sales of rebar, because Best Bar does not sell rebar in its imported form, but rather, sells fabricated reinforcing goods produced from that rebar.
- 5 If Best Bar was to purchase rebar from OneSteel, it would have done so at the wholesale level – i.e. directly from OneSteel.
- 6 OneSteel, as a group, also sells rebar at a "retail" level, through its two related distributors OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company. These transactions are considered to be a sales between the Australian industry (OneSteel Manufacturing) and OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company.
- 7 OneSteel is the Australian industry producing like goods for the purposes of this investigation. OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company are not.
- 8 OneSteel sells the significant proportion of its rebar to OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company. OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company do not source rebar from any supplier other than OneSteel.
- 9 There is evidence that OneSteel's sales of rebar did not decrease at the "wholesale" level during the period of investigation, meaning that OneSteel did not lose sales volume through the only channel it could have been injured by imports from Singapore.
- 10 There is evidence that sales in OneSteel's "retail" business, meaning its sales by OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company, decreased over the period of investigation. This would mean that OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company purchased less rebar from OneSteel during the period of investigation, than in the year prior.
- 11 Insofar as OneSteel lost sales volume to its "retail" businesses, there is no connection between that loss of sales and Best Bar's imports of rebar from Singapore.
- 12 *Report No. 264 – Alleged Dumping of Steel Reinforcing Bar Exported from the Republic of Korea, Malaysia, Singapore, Spain, Taiwan, The Kingdom of Thailand and the Republic of Turkey ("Report 264")* made no finding as to whether the loss of sales volume occurred at the wholesale level, or whether, as the evidence suggests, that the loss of sales volume was

isolated to OneSteel's sales to OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company.

Best Bar wishes to emphasise that its position is not that Report 264 should have limited its consideration to whether OneSteel suffered injury in relation to its sales to non-related entities. WTO jurisprudence is clear that an injury finding must relate to the *domestic industry producing like goods* as a whole.¹ Best Bar does not request that a different approach be taken.

However, any finding that imports have caused material injury must be based on positive evidence. The Commission has before it evidence – from OneSteel itself – that the volume injury it claimed to have suffered occurred in relation to its sales to its related entities. Imports of rebar from Singapore do not compete with those sales. At the level at which Singaporean rebar competes with OneSteel's product, the same evidence suggests there was actually an increase in sales. Other importers may compete with OneSteel Reinforcing Pty Limited and the Australian Reinforcing Company in sales of rebar. Best Bar does not. Therefore the loss of sales volume cannot be linked to Best Bar or imports from Singapore.

Accordingly, the evidence does not establish a connection between the imported rebar from Singapore and OneSteel's 4.3% decrease in sales volume and consequent 3.7% decrease in market share. Under the circumstances:

- it was not correct to attribute that injury to imports from Singapore; and
- it was not correct to find that imports from Singapore caused that injury.

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

Best Bar considers that the finding that its imports caused injury to OneSteel in the form of price suppression was neither correct or preferable. Best Bar's submission in this regard may be summarised as follows:

- 1 The Commission found that OneSteel had suffered price suppression.
- 2 The finding that OneSteel had suffered price suppression was based on a "price undercutting analysis".
- 3 The price undercutting analysis purported to have been undertaken on the basis of "*importer sales of dumped rebar*".
- 4 Best Bar is the sole importer of rebar from Singapore. During the period of investigation, Best Bar sold [CONFIDENTIAL INFORMATION DELETED – number] of rebar in the form it was imported into the Australian market. This represented [CONFIDENTIAL INFORMATION DELETED – number] of the 900,000 tonnes sold in the Australian market. This rebar was sold at prices of over [CONFIDENTIAL INFORMATION DELETED – number]. Best Bar does not consider it likely that these prices undercut OneSteel's prices.
- 5 Otherwise, Best Bar sold fabricated rebar in the Australian market. Fabricated reinforcing products are not "like" the non-fabricated rebar, nor are they homogenous or priced uniformly.
- 6 Even if it were relevant, Best Bar does not compete with OneSteel in its sale of fabricated reinforcing products. Best Bar competes with OneSteel Reinforcing and the Australian

¹ Please refer to Best Bar's submission dated 3 June 2015, if you would like further information regarding this proposition.

Reinforcing Company, which do not form part of the Australian industry producing like goods. Any undercutting analysis taken at this level would be meaningless to answering the question of whether imports from Singapore caused material injury to the Australian industry producing like goods.

In addition to the price undercutting analysis, Report 264 also includes an additional two analyses said to support the conclusion that imports, including those from Singapore, caused the price suppression identified by Report 264.

The first of these analyses is a comparison between *“import offers”* and *“OneSteel actual weighted average selling price to two major consumers of rebar”*²

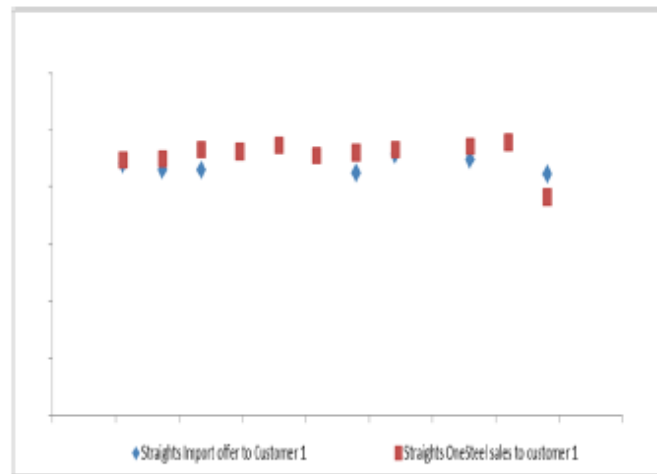


Figure 8 - Import price parity model - Pricing over investigation period - Straights

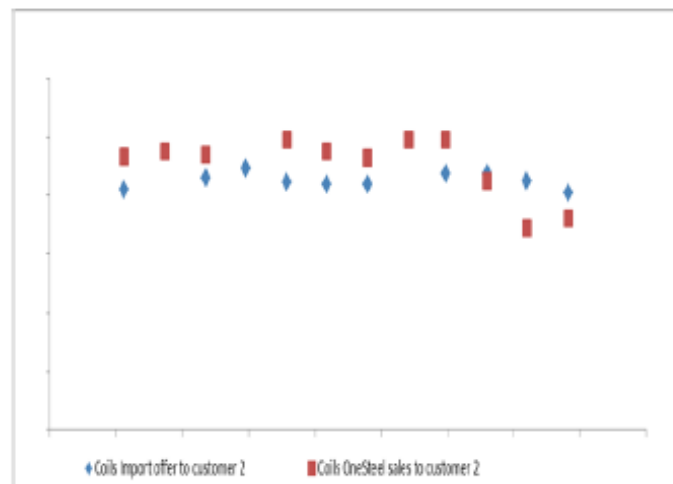


Figure 9 - Import price parity model - Pricing over investigation period - Coil

² Report 264, page 77.

The Commission considers this establishes that the price of imports is “a key determinant of OneSteel’s selling price” and that “[t]aking into account price sensitivity in the Australian rebar market, it is likely that dumped prices will directly cause price injury resulting in reduced profits”.³

Best Bar has major concerns regarding this analysis:

- Report 264 refers to “import offers”. It does not specify that those offers were necessarily from Spain, Korean, Taiwan or Singapore. That is to be contrasted with the second analysis which, as will be discussed, expressly references that its prices are “dumped prices”. It may be that Report 264 is setting up the principle that there is simply a relationship between import price offers – generally and irrespective of source – and OneSteel’s prices.
- Respectfully, the conclusion that “*dumped prices will directly cause injury*” does not follow from this analysis. At most, all the analysis can show is that there was some relationship between OneSteel’s prices to the relevant consumers of rebar, and import offers received by those consumers. The strength of this relationship is dubious, particularly in the case of “straights” where-in only seven import offers are used as a point of comparison to OneSteel’s prices. More generally though, there does not appear to be any consistent pattern between the two different “prices”.
- Even if there was a strong statistical correlation between the two different prices, at most the analysis can only be evidence of a relationship between import offers to the relevant customers and OneSteel’s prices to those customers. It cannot be generalised to other sources of rebar, and cannot be used to establish that imports *from Singapore* caused price injury to OneSteel.

Report 264 also includes indeterminate references to “*direct quote and negotiation*” evidence supporting the relationship between import prices and OneSteel’s prices. No further detail of this evidence is provided. Best Bar trusts the ADRP to engage in the kind of forensic and analytical exercise from which Best Bar has been excluded by reason of the Commission’s reluctance or inability to be more candid. In short, who is “Customer 1” and “Customer 2”, and were Singaporean exports involved in those “offers”? We do note that OneSteel’s own application indicated that imports from Singapore were consistently made at the highest price of any of the countries subject to the investigation, which does suggest this “*quote and negotiation*” evidence does not relate to Singaporean rebar.⁴

The next analysis is a comparison of the “*weighted average selling price of goods on a quarterly basis over the investigation period for a single large customer purchasing rebar from both OneSteel and importers selling dumped goods*”.⁵

³ *Ibid.*, page 78.

⁴ That information can be viewed in detail at pages 22 and 23 of *Consideration Report No. 264 – Application for a Dumping Duty Notice – Steel Reinforcing Bar Exported from the republic of Korea, Malaysia, Spain, Taiwan, The Kingdom of Thailand and the Republic of Turkey*.

⁵ Report 264, page 80.

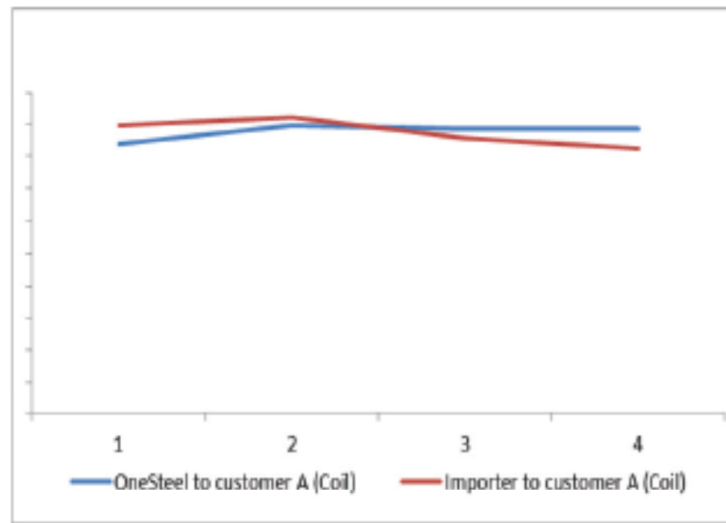


Figure 12 – Coils market pricing - dumped goods vs OneSteel

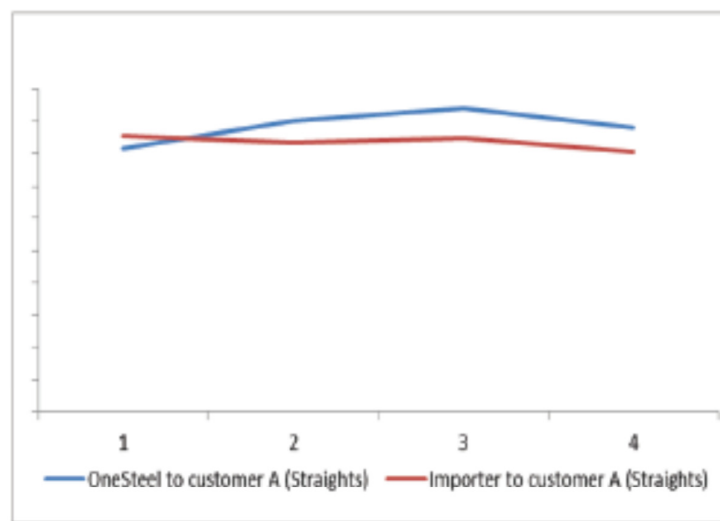


Figure 13 – Straights market pricing - dumped goods vs OneSteel

Again, we note that this analysis relates to a “single customer purchasing rebar from both OneSteel and importers”. To reiterate, Best Bar did not sell large volumes of rebar to customers in Australia so, again, this analysis is not evidence that imports from Singapore have undercut OneSteel’s prices.

Ultimately, Best Bar does not consider that anything in Report 264 can be positively said to find that there is a relationship between imports of rebar from Singapore, and the price suppression found to be suffered by OneSteel.

Report 264 admits that there are weaknesses in the price injury analysis:

The Commission notes that [sic.] the findings in EC - Salmon (Norway) in respect of Article 3.2 of the ADA. Article 3.2 provides that the investigating authorities shall consider whether there has been a significant price undercutting or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. Article 3.2 indicates that a finding of

significant price undercutting is not necessary to a finding that dumped imports have had an effect on prices. Although the price undercutting analysis detailed in this chapter does not demonstrate consistent undercutting for every month of the investigation period, based on evidence of the degree of price sensitivity in the rebar market, OneSteel's matching of import prices and the price suppression found, the Commission is satisfied that the imported goods have had a significant effect on OneSteel's prices. The Commission also took into account market intelligence evidence provided by OneSteel which, despite not being used in the price undercutting analysis, provided examples that OneSteel faced pressure to lower its prices in order to compete with imported goods.⁶

In this regard, Best Bar has the following comments:

- Both the “price sensitivity in the rebar market” and “OneSteel's matching of import prices” appear to be based upon the analysis as described by “Figure 8” and “Figure 9”. Best Bar reminds the ADRP of Best Bar’s criticisms of that analysis, as outlined above, and of the lack of relevance of that analysis to imports of rebar from Singapore discussed above.
- The “price suppression found” is the injury that the Commission had found to have been suffered by OneSteel. The proposition that “price suppression” is evidence that dumped imports have caused “price suppression” is without merit.

Finally, Best Bar has to question how “material” the injury was. As noted by the above extract from Report 264, any price undercutting must be “significant” to be sufficiently injurious from a WTO perspective. Best Bar doubts that the price undercutting found to occur can meet that standard. With regard to price suppression Report 264 provides:

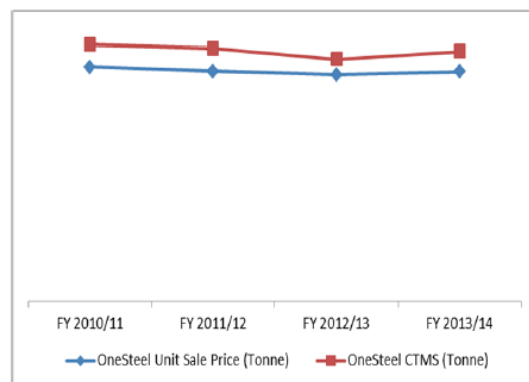


Figure 6 – OneSteel's Unit Revenue v Unit CTMS

Report 264 states that this chart shows that:

- *OneSteel's unit CTMS exceeded its unit revenue in each year of the injury analysis period;*
- *both unit CTMS and unit revenue declined between 2010/11 and 2012/13, before increasing in the investigation period; and*
- *the margin between unit CTMS and unit revenue declined in 2012/13 before widening in the investigation period.*

In that regard, Report 264 concluded that:

⁶ *Ibid.*, page 86.

The Commission considers Figure 6 demonstrates that OneSteel has experienced price suppression during the investigation period, where the margin between unit CTMS and unit revenue increased.⁷ [underlining supplied]

It appears to Best Bar that the conclusion that OneSteel suffered from “price suppression” – which is described in Report 264 as “*being where price increases, which otherwise would have occurred, have been prevented*”⁸ – during the period of investigation was based on the finding that the margin between unit CTMS and unit revenue increased over the previous year. In Best Bar’s view, this conclusion does not follow from the analysis. According to OneSteel’s application, the cost and price trend over the injury determination period was as follows:

| | 2010/11 | 2011/12 | 2012/13 | 2013/14 |
|----------------------------|---------|---------|---------|---------|
| costs ⁹ | 100.00 | 98.64 | 94.52 | 97.50 |
| price ¹⁰ | 100.00 | 98.24 | 96.80 | 98.06 |

This appears to follow the same trend as was plotted in “Figure 6” from Report 264.

Although we cannot determine OneSteel’s margin based on this indexed information, it does provide insight into the relationship between price and cost. When costs fell by 1.36% in 2011/12, prices fell by 1.76%. When costs fell by 4.18% in 2012/13 (over 2011/12 rates), prices fell by 1.47% in the same period. When costs increased by 3.15% in 2013/14, prices increased by 1.3%. The things to note in this regard are:

- OneSteel’s costs have continually been higher than their prices. There can be no assumption that dumping has occurred outside the period of investigation, and therefore there can be no assumption that OneSteel’s perpetual loss-making position has been caused by dumping.¹¹
- Although prices move with costs, the movement in prices has been much less significant than the movement in costs.
- The largest fall in costs – 4.18% in 2012/13 - was matched by only a 1.47% decrease in price. The 1.3% increase in price during the period of investigation is more significant relative to the 3.15% increase in costs during the period of investigation. Compared to the previous year’s data, it is not apparent that any price increase has been prevented.

So, the margin between price and CTMS may have increased in the period of investigation compared to previous years, however, that is not the definition of “price suppression”. Price suppression occurs where “*price increases, which otherwise would have occurred, have been prevented*”. The price increase in the period of investigation is in line with the increases and decreases in price that have occurred in previous years. The price increase during the period of investigation is itself more significant relative to contemporaneous increase in costs, than the price decrease that occurred the previous year was compared to the decrease in costs that year. All of which is to say, based on OneSteel’s historical trends from years in which no dumping has been found to have occurred, that the price increase which occurred was reasonable given the increase in costs. Therefore it is not apparent that there is prices suppression, or that the price suppression is “significant”.

In conclusion, Best Bar submits:

⁷ *Ibid.*, page 65.

⁸ *Ibid.*, page 64.

⁹ *Steel reinforcing Bar exported from Republic of Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey – Application for the publication of dumping duty notices* (“the application”), page 23.

¹⁰ The application, page 24.

¹¹ In accordance with Section 269T(2AE) of the Act.

- It is not apparent that OneSteel has suffered price suppression as a result of dumped imports.
- To the extent that OneSteel may have suffered price suppression, the analysis in Report 264 is not capable of asserting that the price suppression was caused by imports of rebar from Singapore.
- As there is no evidence linking imports of Singaporean rebar with the price suppression, there is no link between imports of Singaporean rebar and the reduced profits and profitability OneSteel is considered to have suffered during the period of investigation.

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

Best Bar considers that the finding that imports from Singapore caused material injury to OneSteel is also materially flawed because it does not properly consider the impact of imports from other sources on OneSteel's performance. Best Bar's submission in this regard may be summarised as follows:

- 1 In accordance with Section 269TAE(2A)(a), the Parliamentary Secretary was required to consider whether any injury to an industry was caused by the volume and price of imported like goods that were not dumped. Any such injury was not to be attributed to the exportation of dumped goods.
- 2 Report 264 considered two different types of undumped goods - imports from countries not subject to the investigation, and imports of "undumped goods" being imports from Turkey, Malaysia and Taiwan, which although subject to the investigation, were found not to have been dumped.
- 3 With regard to undumped goods, Report 264 noted that their volume had increased in the investigation period by over 16%, but that imports from Malaysia and Thailand had fallen, whereas imports from Turkey had increased. Report 264 only considered the price of imports from Turkey.
- 4 With regard to goods from countries that were not subject to the investigation, Report 264 found that their share of the Australian market was 6%, and that this volume was insufficient to have a material influence on the price of rebar. No consideration of the price of these imports is evident in Report 264.
- 5 The total volume of both categories of these goods was 11% during the period of investigation. It is likely that the volume of dumped goods was 22.5% during the same period.
- 6 OneSteel would be equally sensitive to the price of undumped imports as it would be to the price of dumped imports. Therefore, all prices are equally like to cause price suppression. However, it is the lowest prices that will have the most suppressive effect.
- 7 Report 264 found that prices of rebar from Singapore were only lower than prices from undumped sources for three months out of the twelve month investigation period. Best Bar considers that at all times NatSteel's prices would have been higher than prices from dumped sources.
- 8 Accordingly, in the absence of Singaporean imports, OneSteel's prices still would have been suppressed.
- 9 Report 264 fails to properly consider the injury caused by the volume and price of imported like goods that were not dumped, as required by Section 269TAE(2A)(a).

Given that imports of rebar from Singapore were generally higher priced than imports from the “non-dumped” countries, and higher than dumped imports from other sources, it is not correct to attribute injury to imports of rebar from Singapore.

Finding 4 That it was appropriate to consider the cumulative impacts of imports from Singapore with imports from Korea, Spain and Taiwan

Best Bar does not consider that it was the correct or preferable decision to consider the cumulated effect of imports from Singapore along with imports from Korea, Spain and Taiwan. Best Bar’s submission in this regard may be summarised as follows:

- 1 In accordance with Section 269TAE(2C)(e) the Parliamentary Secretary may consider the cumulative effects of subject exports where it is appropriate to do so having regard to the conditions of competition between the subject goods, and the conditions of competition between the subject goods and the domestically produced like goods.
- 2 Report 264 found that it was appropriate to consider the cumulative effect of the subject imports because the conditions of competition were “similar” between imported rebar and domestically produced rebar. The analysis in Report 264 failed to consider the actual conditions of competition between Singaporean rebar and other imported rebar, and Singaporean rebar and Australian produced rebar.
- 3 When regard is had to the actual conditions of competition, it is clear that it was not appropriate to consider the impact of imports from Singapore cumulatively with the imports from the other countries.
- 4 This inappropriateness arises because:
 - (a) the loss of sales volume found to have been suffered by OneSteel only occurred in relation to its sales to its related distribution entities. At the wholesale level – the level that Best Bar could purchase from – there was an increase in sales;
 - (b) the price undercutting that was found to exist cannot be attributed to exports from Singapore, as rebar from Singapore was not sold in the form in which it was imported; and
 - (c) price suppression cannot be attributed to imports from Singapore because, according to the Commission, such imports were generally higher priced than non-dumped imports and, Best Bar believes, higher priced than other import sources, whether dumped or not.
- 5 The result of this “inappropriate” cumulation was the attribution of injury to imports from Singapore, in factual circumstances where those imports could not have been found to have caused such injury.

As reiterated in this submission, there is no clear narrative in Report 264 which indicates that imports from Singapore have caused injury to OneSteel. Again, Best Bar submits that the incorrect cumulation of Singaporean rebar with rebar from the other subject countries has resulted in a broad, porous and ultimately unanchored finding that rebar from Singapore has caused injury to OneSteel.

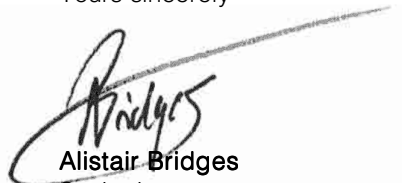
Best Bar once again proposes that the correct and preferable decision was that imports of rebar from Singapore did not cause the Australian industry material injury in the form of:

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

It was only the incorrect cumulation of the impact of other imports with imports from Singapore that enabled the Commission's finding that Singaporean rebar had caused injury to the Australian industry producing like goods.

Accordingly, we submit that the requirements for the publication of dumping notices under Section 269TG(1)(b)(i) and (ii) and 269TG(2)(b) of the Act were not met and could not be met with regard to Singaporean exports. Therefore, we respectfully submit that the Parliamentary Secretary should not have decided to publish notices under those Sections, and that the ADRP should now recommend that they be revoked.

Yours sincerely



Alistair Bridges
Senior Lawyer