

October 26, 2020

**SUBMITTED BY EMAIL**

**PUBLIC**

SIMA Registry and Disclosure Unit  
Anti-Dumping and Countervailing Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11<sup>th</sup> Floor  
Ottawa, ON K1A 0L8

Dear Sir/Madam:

**RE: Concrete Reinforcing Bar 2  
Request for Normal Value Review – RB2 2016 IN  
Metalurgica Galaica, S.A**

We represent ArcelorMittal Long Products Canada G.P. (“**AMLPC**”), a domestic producer of concrete reinforcing bar (“**rebar**”) and participant in the Canada Border Services Agency’s (the “**CBSA**”) investigation into dumped rebar from Portugal (RB2 2016 IN).

AMLPC has reviewed the public version of Metalurgica Galaica, S.A.’s (“**Megasa**”) normal value review (“**NVR**”) request, dated September 9, 2020. The CBSA should defer initiating NMV for rebar until price, cost and demand volatility associated with the global pandemic have stabilized. Megasa’s request appears to be designed to take advantage of the recent decline in prices and costs in order to secure low normal values before prices and costs increase as the global economy recovers from the COVID-19 pandemic.

In addition, we note that the CBSA Antidumping and Countervailing Duty Directorate is facing unprecedented circumstances and an extremely high workload involving proceedings with mandatory statutory deadlines in other priority proceedings under the *Special Import Measures Act* (“**SIMA**”). The Canadian government even passed extraordinary legislation to extend statutory timelines for various statutes, including SIMA. For example, the CBSA’s final determination in the *Corrosion-Resistant Steel 2* (NQ-2019-002) case was delayed by 4 months. NVRs are discretionary proceedings that should only be undertaken in appropriate circumstances, taking into consideration not only market factors, but also the availability of resources to conduct NVRs given the demands associated with other priority SIMA proceedings.



### **Access to the Confidential Record**

AMLPC was not provided access to Megasa's confidential normal value request. The principles of procedural fairness require that a party know the case to meet.<sup>1</sup> In all other SIMA proceedings, the CBSA balances this basic legal principle with the need to protect confidential business information by providing outside legal counsel that have submitted undertakings with exclusive access to the confidential record. In this case, however, the CBSA has declined to provide access to counsel with undertakings on the basis that there is no official proceeding underway.

The CBSA's refusal to provide counsel with the confidential normal value review request undermines the objective and purpose of making normal value requests fair and transparent by providing AMLPC with the ability to comment on such requests. The Rebar 2 Finding is for the benefit of the domestic industry and the domestic industry has an interest in any review of Megasa's normal values. However, the domestic industry cannot comment on whether the facts warrant a normal value review when those facts are withheld. By depriving AMLPC's counsel access to the confidential version of Megasa's normal value request, the CBSA has infringed on the domestic industry's right to procedural fairness.

### **Initiating would be contrary to the purpose of normal value reviews and SIMA**

Megasa seeks to have its normal values updated to reflect prices and/or costs at the bottom of the current economic downturn. With prices now increasing, Megasa is hoping to use this process to gain a competitive advantage in the Canadian market. Any normal values issued to Megasa based on depressed prices and costs would be outdated as soon as they are issued and provide Megasa with normal values that would not reflect the prices and costs that are expected to prevail in 2021.

The purpose of NVRs is not to ensure that exporters from countries subject to SIMA findings have low-priced access to the Canadian market. Rather, the purpose is: "...to ensure effective enforcement of the Canadian International Trade Tribunal's (CITT) orders and findings".<sup>2</sup> Timing a NVR request to capture the bottom of the price cycle, at a time when current prices are rising, is patently inconsistent with this purpose.

---

<sup>1</sup> *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para 56.

<sup>2</sup> *Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)*, Memorandum D14-1-8, Issued July 19, 2019, available online: <https://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-8-eng.html> at para. 1.

<sup>3</sup> See e.g. *Gypsum Board*, GC-2016-001, Statement of Reasons (January 19, 2017), at para 37; *Caps, Lids and Jars*, PB-95-001, Statement of Reasons (February 26, 1996).

---



Updating normal values to capture a period of extremely low pricing is also inconsistent with the purpose of SIMA. The Tribunal has consistently held that “the object and purpose of SIMA is to protect domestic industries from injury caused or threatened by the dumping or subsidizing of foreign goods”.<sup>3</sup> The evidence described in and attached to this letter demonstrates that updating normal values at this time would result in normal values below prevailing market prices. This would expose the domestic industry to injury rather than protecting it.

**The global and Portuguese rebar prices have been in a state of flux**

The global coronavirus pandemic, and corresponding economic downturn, have affected rebar pricing and demand in every market.

In its public submissions, Megasa notes that it submitted its price and cost data for the period of January 2018 to July 2020. These submissions therefore compare CRU and MetalBulletin pricing from this same period and through early October 2020. Note that Portuguese rebar pricing is not available to AMLPC and it has therefore focused on pricing from similar regions, notably southern Europe.



Table 1 below reports MetalBulletin prices for rebar for various markets:

**Table 1**  
**MetalBulletin Rebar – Domestic Rebar Markets (US\$/MT)<sup>4</sup>**

<b>US\$/MT</b>	<b>China</b>	<b>CIS export</b>	<b>Egypt</b>	<b>Northern Europe</b>	<b>Southern Europe</b>	<b>Turkey</b>	<b>Singapore import</b>
Q1 2018	[						
Q2 2018							
Q3 2018							
Q4 2018							
Q1 2019							
Q2 2019							
Q3 2019							
Q4 2019							
Q1 2020							
Q2 2020							
Q3 2020							]

---

<sup>4</sup> Confidential Attachment 1: MetalBulletin pricing for rebar. All prices are domestic unless indicated otherwise. Turkish data is only available as of August 2018 due to a change in MetalBulletin's pricing methodology. China is the average price for China East and China North.

---



Table 2 below reports CRU's prices for rebar, both past and forecast. Note there is no forecast pricing available for Italy, Spain and the United Kingdom.

**Table 2**  
**CRU Long Products Market Outlook September 2020 – Rebar**  
**(US\$/MT)<sup>5</sup>**

US\$/MT	2018				2019				2020				2021			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
US Midwest	[															
Germany																
Italy																
Spain																
UK																
China																
Asia																
UAE																]

Tables 1 and 2 above report that global and Southern European rebar [

].

<sup>5</sup> Confidential Attachment 2: CRU Long Products Market Outlook (September 2020), Tables S42 and S43.



Table 3 below summarizes the average rebar price declines between Q2 2019 and Q2 2020:

**Table 3**  
**Rebar price declines from Q2 2019 to Q2 2020<sup>6</sup>**

<b>Rebar prices</b>	<b>% change Q2 2019 vs Q2 2020</b>
<b>MetalBulletin</b>	
China average	[ ]
CIS export	
Egypt	
Northern Europe	
<b>Southern Europe</b>	
Turkey	
Singapore import	
<b>CRU</b>	
US Midwest	
Germany	
Italy	
Spain	
UK	
China	
Asia	
UAE	]

MetalBulletin and CRU report the average rebar price decline between Q2 2019 and Q2 2020 was [ ]% in all markets, [ ]% throughout Europe and [ ]% for Southern Europe.

In most markets, economic recovery began in Q3 2020 and remains ongoing. As reported at Table 2, CRU forecasts the German rebar price to stabilize over the Q1 2021 to Q4 2021 period.

MetalBulletin also reported that Southern Europe rebar prices [ ].<sup>7</sup> In particular, Southern Europe's rebar price was [ ]

<sup>6</sup> Confidential Attachment 1: MetalBulletin pricing for rebar; Confidential Attachment 2: CRU Long Products Market Outlook (September 2020), Tables S42 and S43.

<sup>7</sup> Confidential Attachment 1: MetalBulletin pricing for rebar at p. 2.



alone.<sup>8</sup> ]. Pricing rose US\$[ ]/MT or [ ]% from [ ]

The basis of Megasa's normal value review request is that there was a recent downward trend in the price of rebar. The recent price volatility [ ], but current forecasts are that the price of rebar is in a state of recovery.<sup>9</sup> It is unreasonable to recalculate prospective normal values in the middle of a pandemic induced economic upheaval, particularly when recovery is underway. Any new normal value calculated today would most likely need to be reviewed at the end of the pandemic once rebar markets have normalized. Initiating a review now would result in a waste of CBSA resources and unnecessary costs to all parties.

Further, the domestic industry objects to calculating prospective normal values based on Q2 2020 pricing, costs and profits. This quarter was the bottom of an unprecedented economic downturn and an anomaly. It would undermine the objective of SIMA to permit exporters to take advantage of unprecedented economic turmoil by allowing them to set prospective normal values based on the lowest market pricing and costs during a pandemic induced economic downturn.

### **Rebar in coil form**

Megasa also requests that normal values be established for coiled rebar produced at its SN Seixal mill (its only mill that produces Subject Goods in coil form). Megasa states that it had no sales of coiled rebar during the original investigation period and subsequent reviews and therefore normal values were not established for this good. Megasa wants normal values because it "has seen an increasing Canadian market preference for rebar in coil form" and "are asking for an opportunity to participate in this segment of the rebar market in Canada."

AMLPC submits that the establishment of normal values for coiled rebar is not warranted for two reasons: (1) current and forecasted rebar price trends and (2) protection of the domestic industry.

First, as discussed above, [ ]. Prices are forecast to increase in the near to medium term. In this rising environment, any new normal values would be based on already outdated sales and cost data.

Second, Megasa wants normal values for coiled rebar so it can gain market share in Canada for this product. As Megasa is not currently participating in this market segment, it will have to steal market share from other players, which will likely include AMLPC and the other domestic rebar

---

<sup>8</sup> Confidential Attachment 1: MetalBulletin pricing for rebar at p. 2.

<sup>9</sup> Confidential Attachment 1: MetalBulletin pricing for rebar at p. 2; Confidential Attachment 2: CRU Long Products Market Outlook (September 2020), Table S42.

---



producers. The domestic industry is vulnerable and already being injured by several sources, as evidenced by the complaint that was recently filed by AMLPC and other domestic producers concerning dumped rebar from 7 countries (*Rebar 3*).<sup>10</sup> The purpose of SIMA is to protect the domestic industry. Introducing a new player into this market segment is not warranted at this time.

Lastly, if CBSA were to initiate a normal value review, AMLPC submits that any normal values for coiled rebar, a new product for Megasa, must be initially determined using the ministerial specification. Normal values for coiled rebar can only be assigned to Megasa during a *subsequent* normal value review. This is noted in the SIMA Handbook at section 4.15.9:

4.15.9. New Products or New Models

During the course of a re-investigation or normal value review, the CBSA will attempt to establish values for models of subject goods that are being imported or will in the foreseeable future be imported into Canada. Exporters may also request that the CBSA establish values for models presently sold only in the exporters' domestic market, which they intend to sell to Canada in the future. The CBSA will attempt to accommodate these requests, provided that the exporter has furnished sufficient cost and selling price information, and taking into account the timeframes established in the schedule.

**Subject goods for which company specific normal values have not been established**, such as new models, **will initially be determined using the ministerial specification** – see Part 5.8.2. However, specific values for those goods may subsequently be determined during a future re-investigation or future normal value review.<sup>11</sup> [Emphasis added]

NVRs are a means to address outdated normal values. The elapsed time since values were last issued is a stated consideration in CBSA's normal value review policy.<sup>12</sup> However, CBSA should also consider the substantive question of whether updated normal values are likely to be more or less representative of present and near-term market conditions. Where holding a review would likely increase rather than narrow the gap between those values and prevailing prices, CBSA should decline to initiate a review. Conducting a NVR at this time will increase the gap between prospective normal values and prospective Portuguese prices and costs. In other words, if CBSA were to initiate a NVR, it would be introducing rather than addressing a distortion in the market by providing Megasa with normal values tied to an irregular pricing and costing event.

---

<sup>10</sup> *Certain Concrete Reinforcing Bar*, RB3 2020 IN (CBSA) and PI-2020-004 (CITT) (*Rebar 3*).

<sup>11</sup> See also *Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)*, Memorandum D14-1-8, Issued July 19, 2019, available online: <https://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-8-eng.html> at para. 28.

<sup>12</sup> *Ibid.*, at para. 12(b).

---





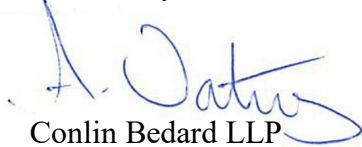
## **Conclusion**

From time-to-time it is necessary to update prospective normal values. However, it is not appropriate to do so in the middle of a global economic downturn, when the period of investigation will include an abnormally low-priced quarter and where the proposed period of investigation is forecast to precede an immediate economic recovery. Instead, it is most appropriate to defer the normal value review until such time that markets and prices stabilize.

Further, the high work-load currently facing CBSA involving SIMA proceedings with mandatory timelines must be taken into consideration given priority at this time. We submit that CBSA should decline to initiate a NVR at this time.

If the CBSA chooses to initiate a normal value review at this time, it should expect that the domestic industry will insist on a subsequent review once prices have normalized following the economic downturn.

Yours truly,



Conlin Bedard LLP

Concrete Reinforcing Bar 2  
Request for Normal Value Review – RB2 2016 IN  
Metalurgica Galaica, S.A

---

## Public Summary of Confidential Attachment 1

---

**Confidential Attachment 1** contains rebar pricing from MetalBulletin which is subject to copyright restrictions, the disclosure of which would cause financial harm to AMLPC

Concrete Reinforcing Bar 2  
Request for Normal Value Review – RB2 2016 IN  
Metalurgica Galaica, S.A

---

## Public Summary of Confidential Attachment 2

---

**Confidential Attachment 2** contains rebar pricing from CRU Long Products Market Outlook (September 2020) which is subject to copyright restrictions, the disclosure of which would cause financial harm to AMLPC.