

# STAUGHTONS

Staughtons Trade Advisory Group Pty Ltd – ABN 65 605 424 459

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## PUBLIC RECORD VERSION

29<sup>th</sup> December 2015

The Director  
Operations 3  
Anti-Dumping Commission  
GPO Box 1632  
Melbourne VIC 3001

Attention: Mr. Reuben McGovern,

Dear Mr McGovern,

### **Re: ADC 316: Grinding Balls exported to Australia from the People's Republic of China**

We write on behalf of our clients, Sino Grinding International Pty Ltd (SINO) in response to claims of alleged dumping and countervailing causing material injury to the Applicants-Moly-Cop & Donhad.

#### **1. Summary:**

We contend that there is no injury caused to the applicants as a result of the alleged dumped/subsidised imports. Rather we suggest their claims of injury are attributable to:

- An aggressive volume strategy by the applicants.
- An internal pricing model that drives a decline in prices based on international raw material indexes despite the applicants being insulated from international market pressures by virtue of a declining Australian exchange rate during the period of inquiry and ownership of their own scrap supplies in the case of Moly-Cop.
- The applicant's reliance on a confected normal value construction, as a means to engineer a dumping margin outcome.

Further we request that the Commission differentiate the claims of injury from competitive advantage delivered by the distinct and substantive differences in the product due to:

- Efficiencies of Blast Furnace billet production technology relative to grinding media produced by Electric Arc Furnaces and as a result of:-
- Technical development and technology investment by our client's exporter/manufacturers. These efficiencies and innovations deliver productivity benefits to our client's customers; --
- the Australian mining industry, whose paramount issues are productivity & performance.

It is notable that one applicant, Moly-Cop presently has their grinding media business for sale.

Progression of this application would, in our view, have the effect of delivering undue advantage to Australia's dominant market participants being inconsistent with both WTO principles and the principles of Australia's competition law<sup>1</sup>.

We respectfully request that this case be terminated forthwith based on it being both without substance and opportunistic.

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### 2. The Goods

The goods are assessed for 'likeness' based on the following factors:

- Physical likeness
- Commercial likeness
- Functional Likeness
- Production Likeness.

Against each of these criteria, we draw your attention and consideration to:

#### 2.1 Physical likeness

Sino Grinding is a licensor of grinding media technology utilising micro- alloying of elements such as vanadium and silicon to deliver productivity efficiencies to their customers in the form of improved grain structure and having no weak points in the grinding ball.

This is a source of competitive advantage to our client's business and differs from the technology employed by the applicants.

#### 2.2 Commercial Likeness

Whilst our client's product competes in the same market, we note that there are distinct differences being:

- Blast Furnace produced billet delivering cost savings.
- Chemistry differences delivering superior product performance.
- ■ grades of ball (vs 3 grades for the applicants). This enables customisation of our client's grinding media to both the ore being milled ( i.e.: zinc, copper, gold silver) and to the individual mine. This results in improved productivity efficiencies for the Australian mining customers.

#### 2.3 Functional Likeness

As indicated, whilst the broad function is the same, the inherent differences of our client's grinding balls by virtue of chemistry and ball sizes customised sizes result in the ability to reduce two stages of ore milling to one. This is a critical driver of productivity in the mining industry.(confidential reports attached)

#### 2.4 Production likeness

Sino Grinding employ different production technologies to the applicants.

Apart from sourcing the feed from more technically advanced blast furnace sourced billets, ■ have a distinct point of difference by virtue of the use of hammer forging technology whereas the applicants are reliant on roll forged and squeeze forged technologies.

Collectively these attributes enable a distinctly different, value driven, more productive, and consistent grinding media that is able to be customised (by size and chemistry) to individual ores and mines.

Whilst our clients compete in the same market, there are distinct and substantive differences in a similar manner to 'whisky' and 'vodka'.

### 3. Application

#### 3.1 The Applicants

3.1.1 The Application has been submitted from two businesses Moly-Cop and Donhad.

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3.1.2 Moly-Cop is a business that is presently for sale and is a supplier to Donhad.

3.1.3 The individual applicant's each control almost 40 per cent of the market.

Combined market share has been over 75 per cent over the period of review; and that is a dominant market position.

3.1.4 Regarding the Moly-Cop business and claims of injury, their recent market representations are instructive:

Globally:

- Strong and increased earnings in Mining Consumables<sup>ii</sup> (Moly – Cop ) in 2015.
- 2016 Moly-Cop earnings are projected to grow by 28 per cent over 2015 earnings<sup>iii</sup>.

In Australasia:

- “ Well positioned to capture at least strong market share of expected grinding media growth<sup>iv</sup>”

## 3.2 The Application

We acknowledge the Commission's (ADC) initial rejection noting that the Application contained “critical and important deficiencies which if left unaddressed create doubt on the reasonableness of the grounds”<sup>v</sup> upon which the Application is based.

3.2.1 We respectfully contend that in our opinion the Application remains flawed with deficiencies that at best could be deemed disingenuous and at worst deceptive and misleading.

3.2.2. At a minimum, we request that the indexed tables of claim be completed to substantiate their basis of any claim of injury caused by these relevant imports.

3.2.4 The Applicants claims are predicated on their construction of a normal value criteria and injury on the basis of

- Volume Effects
- Profit Effects ( loss of profits and loss of profitability)
- Price Effects ( price depression and price suppression)

Other injury factors claimed include:

- Reduced revenue
- Reduced return on investment
- Reduced capacity utilisation
- Reduced employment

Considering these:

## 3.3 Normal Value

With regard to the applicant's claims affecting normal value, we note:

3.3.1 Australia has recognised China's market economy status since 2005.

By granting China market economy status, Australia has agreed not to apply the relevant provision of China's accession protocol allowing for a different methodology to establish normal values.

3.3.2 The China Australia Free Trade Agreement came into force on the 20 December 2015.

It is ironic therefore that this application is reliant on claims of Government intervention given that at least one of the applicants has extensively benefited from Government support including:

- the Federal Government's \$300 million Steel Transformation Plan
- imprimaturs on supply to Government infrastructure projects as a result of calls for Government support<sup>viii</sup>

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### 3.3.3 Request to apply an alternate methodology to establish a normal value.

In response to the request to adopt an alternate methodology to establish a normal value:

3.3.3.1- Australia, as a signatory, to the WTO, has a robust anti-dumping system (ADA) that is consistent with the 1947 General Agreement on Tariffs and Trade (GATT) and the 1994 Agreement on Article VI of the General Agreement of Tariffs and Trade.

3.3.3.2- Our understanding is that deferment to alternate methodologies for determining normal values was considered at length [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[illegible]

- A GATT panel report<sup>x</sup> has also examined and commented on the determining of a particular market situation stating:-

- Particular note was made “of the ‘evidentiary burden’ on the [REDACTED] authority to ensure that when there is a finding of a “particular market situation” it should be very clearly established that not only is there a particular market situation but that such a market situation affects the domestic sales so as not to permit a proper comparison”
- Additionally Counsel rebutted the notion that “Article 2.2.1.1 permits the (secondary) use of surrogate third country information under the guise of “all available evidence on the proper allocation of costs” to calculate costs for the purpose of (ascertaining the alternative methodologies for the construction of normal value in) Article 2.2.
- “The second sentence of Article 2.2.1.1 therefore requires that the authority considers all available evidence placed on record by the exporter with respect to the allocation of costs historically utilised by the exporter. Again the use of the word ‘shall’ establishes a very definite legal obligation on the authority to demonstrate why it should not use evidence of the exporter if” such allocations have been historically utilised by the exporter or producer.

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Accordingly we submit that the use of surrogate third country billet prices, that the application is heavily reliant upon, is without merit and an incorrect application of Australia's anti-dumping provisions and obligation.

### 3.4 Material Injury Claims

#### 3.4.1 Volume

The indexed table of sales quantities to support this claim is incomplete with no representation of any change in the applicants sales during the review period.

Table A-5 for both Donhad and Moly-Cop has not been completed.

Any claim of injury must be supported by relevant data. We contend that the incomplete provision of the requisite Application forms is, of itself, cause to terminate the application.

However, from the incomplete data provided the only comments offered are:

- “Donhad’s domestic sales of grinding balls were lower in 2014/15 than in the base year”
- Moly- Cop – “the company has experienced a decline in sales volumes ... for 2014/15”<sup>xi</sup>.

We contrast the ADC analysis that indicates the following:

#### Total Australian Industry Domestic Sales

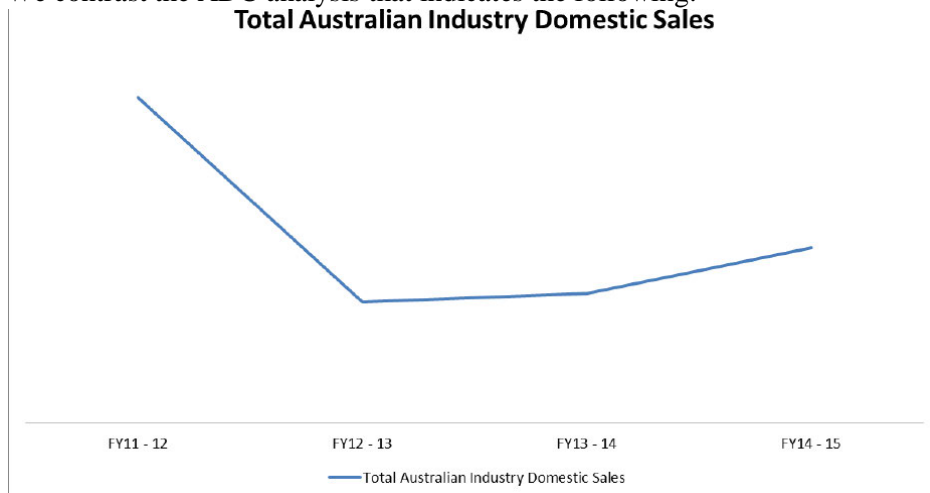


Figure 1: The Applicant's Domestic Sales of Grinding Balls

The data is simply at odds with the application claims as it clearly indicates improved sales volumes over the past two years including a step increase during the 2014-15 period under investigation.

The Commission's conclusion on volume effects that “the applicants have not demonstrated lost sales volume”<sup>xii</sup> is also acknowledged.

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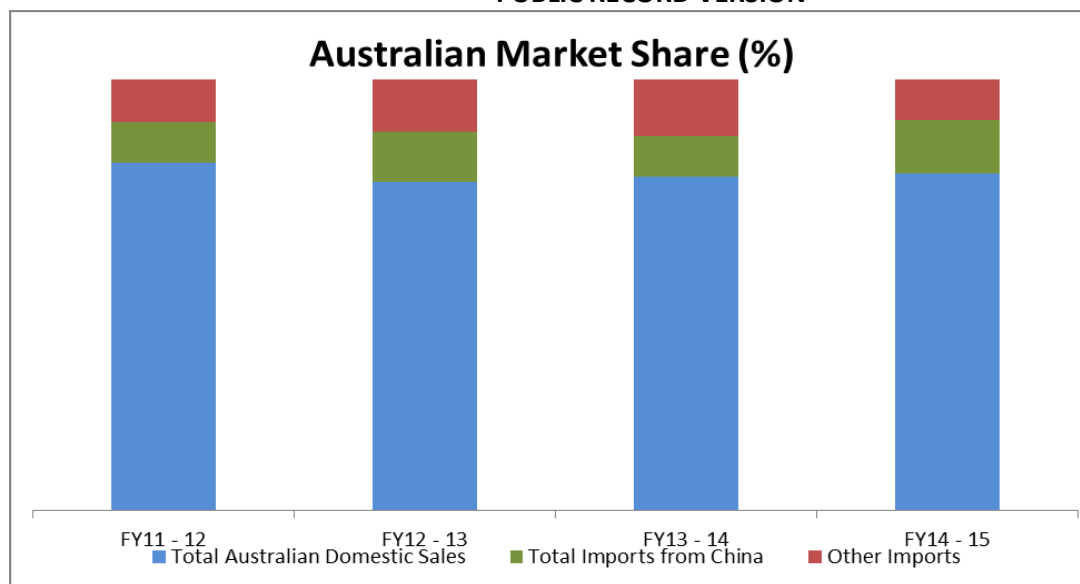


Figure 2: Proportion of the Australian grinding balls market

Market share analysis also indicates that any claims of lost sales volume are in conflict with the application and are, at worst, the transfer of share between the two dominant market players, being the two applicants.

### 3.4.2 Price Effects ( price suppression and price depression)

Central to any consideration of material injury is the applicant's claim that they have "reduced prices in responses to increasing export volumes of Chinese cast and forged grinding balls in 2013/14 and 2014/15"<sup>xiii</sup>.

The Commission however has found that "the applicants' have not demonstrated lost sales volume"

Figure 1 demonstrated that the applicants have in fact increased their sales during the period under investigation; outcomes more consistent with a market aggressor rather than a party subject to injury.

Whether these actions during the period of investigation are related to positioning the Moly-Cop business for sale is a point of conjecture.

Whilst the pricing model assists the applicant's price increases in a rising market, in a falling commodities market the internal pricing model insulates but ultimately perpetuates 'self-harm' of the Applicant's profitability.

The period of review, (2011 through 2015), coincides with the well- publicised collapse of global commodities prices.

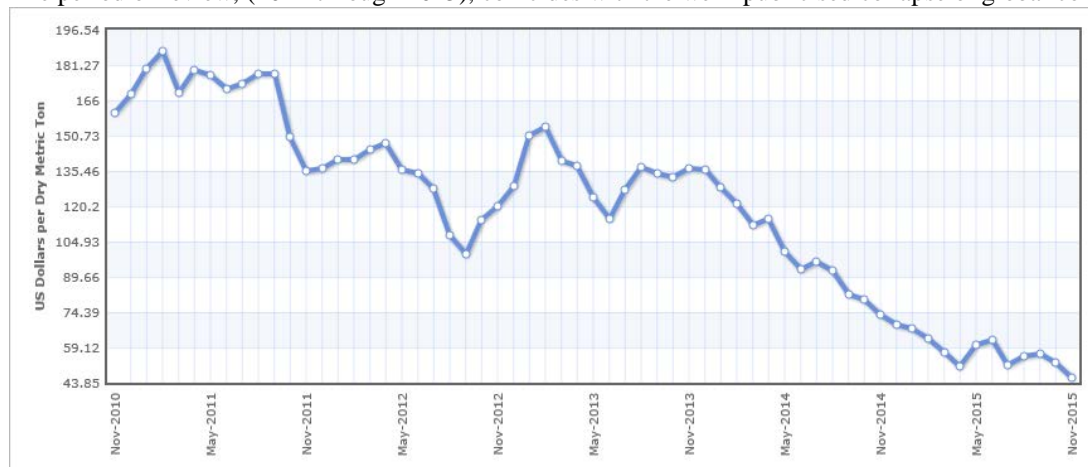


Figure 3: Iron Ore price decline 2011 to 2015 Source: Index Mundi



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### Plunging Metallurgical Coal

With world awash in the steelmaking ingredient, the benchmark price has tumbled.



Source: Bloomberg Intelligence

Bloomberg

Figure 4: Coal Price Decline

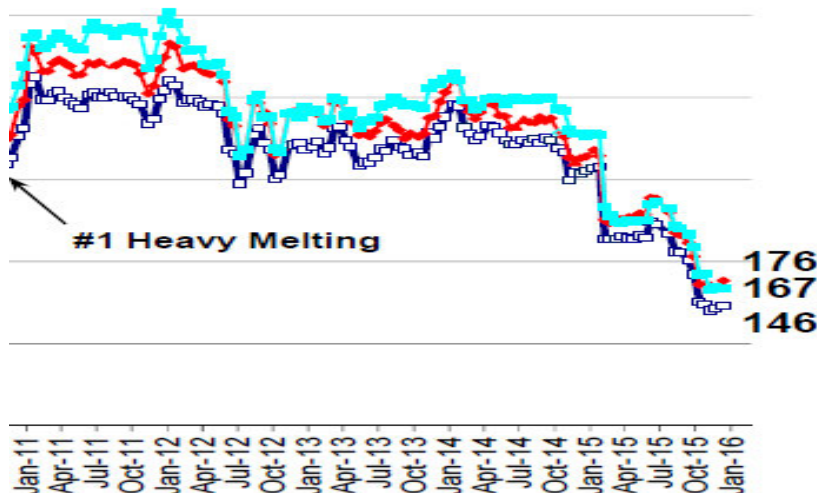


Figure 5: Scrap Prices 2011 to 2015 (US) Source: Steel Benchmarker



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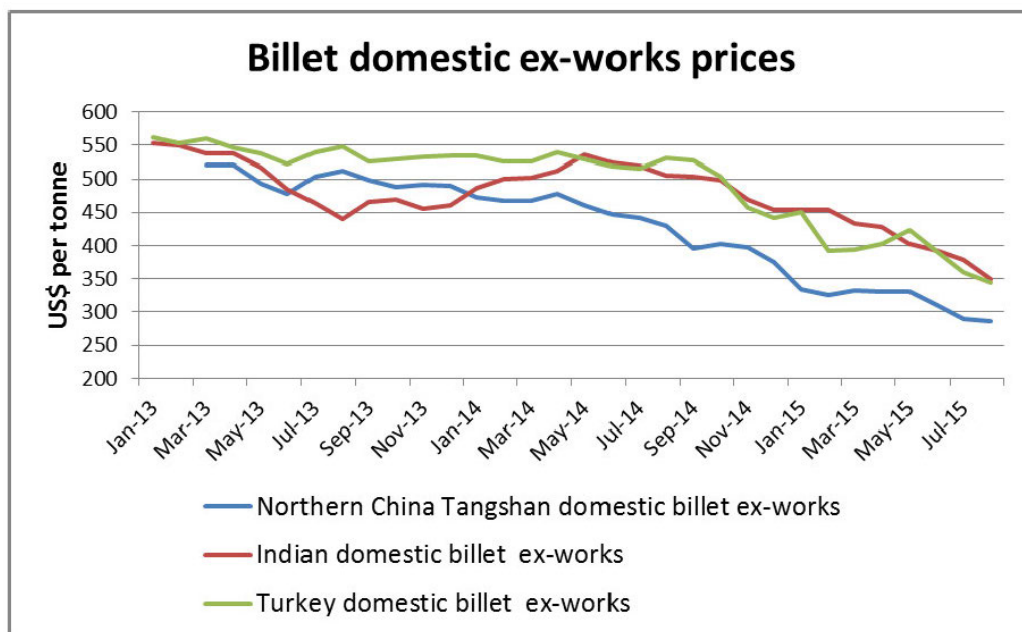


Figure 6: Billet Prices 2011 to 2015

The key driver of the differential in billet prices is technology and the method of manufacture.

This is reflected in the step difference in pricing between Blast Furnace manufactured billet as used by our client and the less efficient Electric Arc Furnace technology predominantly used in India and Turkey and by the applicants.

In this well publicised environment, the applicants have:

- uniquely benefited from a 30 per cent decline in the Australia/USD exchange rate over the review period.
- additionally Moly-Cop have had the benefit of owning their own scrap input via their parent company.

Nevertheless, the applicant's alone have elected to perpetuate a pricing model that reduces prices based on inputs. i.e.:

- *One of the key strengths of the Mining Consumables business is that our grinding media profit margins remain relatively stable through the cycle. This can be attributed to one of the features of 'our' pricing arrangements with customers whereby changes in the prices of the largest input cost, steel or grinding bar, is passed through to our customer. This means the decline in this input cost is helping to lower our customers costs<sup>xiv</sup>*
- *"Donhad do not use price lists"<sup>xv</sup>*

Given the inter-relationship of supply between Moly-Cop and Donhad, it is reasonable to assume that a similar pricing model is followed.

Ascribing injury based on an 'own goal' is both inappropriate and fallacious.

### 3.4.3 Profit and profitability effects

The insufficient provision of data in the Application is again noted.

The notable change impacting profit and profitability is clearly the increase in CTM&S in 2013/14 as Moly-Cop elected to incur a one-off restructuring cost to 'right-size' the Australian operation to match demand<sup>xvi</sup>.

As indicated by the ADC, the applicants achieved an increased level of domestic sales in both the 2013/14 and 2014/15 years<sup>xvii</sup>.

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Accordingly, the applicant's contention that unit prices have reduced to compete with lower priced Chinese offerings whilst unit costs have increased from the 2012/13 levels due to a reduction in production utilisation<sup>xviii</sup> is simply erroneous.

Rather unilaterally determined adjustment costs, coupled with the applicants own automatic downward pricing model (based on their input costs) are far more relevant as the drivers of the declines in profitability.

Confidential Attachment 1 affirms that our client's model of differentiation and seeking a price premium at times renders them uncompetitive on price.

### 3.4.4 Other Injury

Other claims of injury are based on:

#### 3.4.4.1 Reduced revenues

Reduced revenues are an unavoidable consequence of a pricing model where *"changes in the prices of the largest input cost, steel or grinding bar, is passed through to the customer"*.

This is unrelated to the allegations by the applicants.

Sales volumes increased during the period of investigation.

#### 3.4.4.2 Return on Investment

The (internal) lowering of prices will of itself lower investment returns.

This is unrelated to the allegations of the applicants.

#### 3.4.4.3 Capacity Utilisation

The Index of capacity utilisation tables have not been completed in the Application.

However increased sales volumes with reduced employment numbers would of itself result in an improvement in capacity utilisation.

We welcome the applicants' substantiation of this claim.

#### 3.4.4.4 Reduced Employment

Moly-Cop initiated a 'one-off' reduction in employment numbers in 2013/14, the year prior to the PUI to 'right-size' the business.

As the Consideration Report has noted however "the applicants achieved an increased level of domestic sales in both the 2013/14 and 2014/15 years"<sup>xix</sup>

Accordingly any reduction in employment is unrelated to the applicant's injury claims.

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### 3.5 Strategy

Porter<sup>xx</sup> labelled the generic strategies for Competitive Advantage as:

- "Cost Leadership" (no frills),
- "Differentiation" (creating uniquely desirable products and services) and
- "Focus" (offering a specialized service in a niche market).

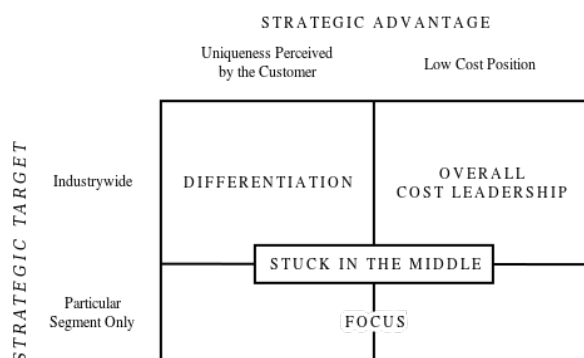


Figure 8: Porters Sources of Competitive Advantage

Whilst drawing on the cost benefits delivered by blast furnace technology (as opposed to EAFs) our client's strategy is one of 'Differentiation' supported by technology benefits and as such cannot be deemed to cause injury to the applicants.

As the two dominant players in the market who have achieved sales volume growth in 2013/14 and 2014/15, the applicants' strategy is less clear.

Driving sales volume growth through lower pricing is consistent with a Cost Leadership strategy. However the applicants own rising CTMS flags issues and constitute what appear to be claimed as material injury in this application.

The recent Harper Review of Competition Law recommended that

"the primary prohibition in Section 46 of the CCA should be reframed to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct if the proposed conduct has the purpose or would have the effect of substantially lessening competition in that or any other market<sup>xxii</sup>"

Redressing internal strategy issues of market participants via dumping duties is not, in our opinion, the role of the Commission and of itself would cause injury to our client's Australian business and result in a contagion effect of higher input costs to Australia's mining sector, an outcome that the applicants themselves advocate against<sup>xxiii</sup>.

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### 3.5 Conclusion:

The lead Applicant's grinding media business is for sale and this case could be deemed opportunistic. Our understanding is that its advisers have valued it at circa \$1.5-1.7 billion.

- This application is heavily dependent on a confected normal value construction that is reliant on an incorrect application of the ADA.
- Claims of injury are not supported by any evidenced data as documented in the Commission's Consideration Report

The only tenuous basis of injury claim is for price suppression.

Whilst pricing may seek to be attributed to the goods subject to the dumping and countervailing claim, the reality, as affirmed by the lead applicant, is that prices are being driven down by their own internal pricing mechanism.

This is despite the applicants being afforded insulation from international market pressures by virtue of a declining Australian exchange rate and ownership of their raw scrap input.

We request that the ADC terminate this case given the dominant market position of the applicants, its opportunistic nature, and the incorrect and unsubstantiated claims of injury.

Sino's two exporters, [REDACTED] both state that have not received any benefit or grant from a GOC entity and in our opinion the Commission must rely on having positive evidence to the contrary in order to ignore those claims. We do accept however that given previous ADC cases such as Silicon Metal, the issue of electricity charges may be a contentious one although the exporters in question will, we understand challenge any presumption posed by the applicants.

We also enclose a marketing 'flyer' of Donhad that promotes it as being a low price market leader.

We would also challenge the inference in the Commission's consideration report that Donhad 'only' sources 'steel feed' from Moly-Cop's associate, 'Onesteel', in that our market intelligence suggests Donhad is also an importer of steel feed from China.

Thank you for your consideration, and please contact the writer, M J Howard for any further information or clarification on matters relating to this submission.

Regards,



**M J Howard**

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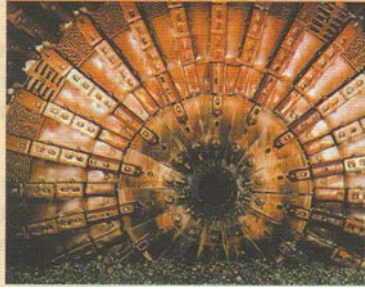
### End Notes

- 
- <sup>i</sup> WTO MFN principle and Harper Competition Law Review Recommendation 30
  - <sup>ii</sup> 2015 Annual General Meeting: Chairman's Address
  - <sup>iii</sup> Arrium's Moly-Cop Grinding out strong growth; Australian Financial Review, September 3 2015
  - <sup>iv</sup> 2015 Annual General Meeting: CEO's Address
  - <sup>v</sup> ADC Consideration Report No 316 ; page 5
  - <sup>vi</sup> 'Arrium calls for Government Support'; The Australian June 12, 2014
  - <sup>vii</sup> <https://australianmade.com.au/licensees/arrium-mining-and-materials>
  - <sup>viii</sup> [REDACTED]
  - <sup>ix</sup> Article 15(a) of China's Accession Protocol
  - <sup>x</sup> ADP 137, EC – Imposition of AD Duties on Imports of Cotton Yarn from Brazil
  - <sup>xi</sup> ADC 316 Application: Moly-Cop Confidential Appendix A3 data; page 18
  - <sup>xii</sup> ADC Consideration Report No 316 ; page 31
  - <sup>xiii</sup> ADC 316 Application: Moly-Cop Confidential Appendix A3 data; page 18
  - <sup>xiv</sup> 2015 Annual General Meeting: CEO's Address
  - <sup>xv</sup> ADC Application ; Item 7 page 19
  - <sup>xvi</sup> Arrium Limited Annual Report 2014; page 17
  - <sup>xvii</sup> ADC Consideration Report No 316 ; page 30
  - <sup>xviii</sup> ADC 316 Application; page 25
  - <sup>xix</sup> ADC Consideration Report No 316 ; page 30
  - <sup>xx</sup> Porter M. E., Competitive Strategy: Techniques for Analyzing Industries and Competitors (New York: Free Press, 1980), page 39.
  - <sup>xxi</sup> Australian Government; Competition Policy Review Final Report; page 62, Recommendation 30 – Misuse of Market Power
  - <sup>xxii</sup> 2015 Annual General Meeting: CEO's Address, page 3

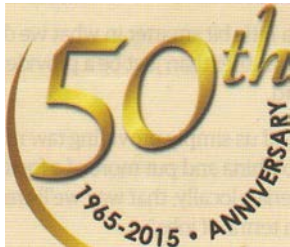
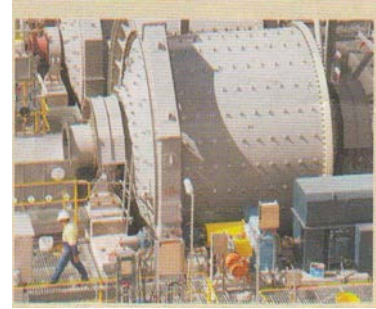
Product Range	Features		Sizes	Applications
Reddon	Low Price Security of Supply Secure Specification	Donhad Innovation Donhad Quality	52mm to 78mm	Ball milling
Classic	Market Standard Security of Supply Secure Specification	Excellent Wear Performance Excellent Cost Performance Donhad Quality	25mm to 150mm	Ball and SAG milling
Hi Carb	Market Leading Security of Supply Secure Specification	Superior Wear Performance Superior Cost Performance Donhad Quality	52m to 125mm	Ball and SAG milling
Rods	Med/Hi Hardness Security of Supply Secure Specification	Tailored Lengths Excellent Wear Performance Donhad Quality	75mm, 90mm, 100mm	Rod Milling

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