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14 August 2017

Mr P Quiggan
Case Manager
Anti-Dumping Commission
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Industry House
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Canberra
Australian Capital Territory 2600

By email

Dear Patrick

POSCO - alleged dumping of rod in coil from Korea
Comments regarding Australian industry's injury allegations

As you know, we represent POSCO in this investigation.

During the period of investigation ("POI"), POSCO only exported **[CONFIDENTIAL TEXT DELETED – number]** MT of rod in coil ("RIC") to Australia. This constituted a mere **[CONFIDENTIAL TEXT DELETED – number]**% of the Australian market in the POI. **[CONFIDENTIAL TEXT DELETED – sales information]**. Given the small volume of exports by POSCO, and the fact that POSCO's sales direction is towards other markets, POSCO has made the commercial decision that it will not complete a full exporter questionnaire response, as has already been advised to the Commission.

Nonetheless, POSCO does wish to make submissions as an interested party. POSCO considers that its inclusion in this investigation by OneSteel Manufacturing Pty Ltd ("the Applicant") was a decision made by the Applicant without proper regard for the fundamental factual and legal constraints imposed on the Commission whereby it may only impose dumping measures if the imports concerned have caused material injury. "Bundling up" the miniscule volume of exports from Korea with the much larger volumes from the other subject countries appears to be part of an attempt by the Applicant to exclude all foreign suppliers from the Australian market regardless of their own specific behaviour and regardless of the materiality of the impact that their exports may have had on the Australian industry.

This is not the purpose of the dumping mechanism. Anti-dumping measures may only be imposed in circumstances where imports are considered to have caused material injury. The question of whether material injury has been caused must be assessed on the basis of the facts and not merely on allegations, conjecture or remote possibilities.[1]

The Consideration Report indicates that this investigation was initiated on the basis of a *prima facie* case that the Applicant had suffered material injury in the form of *"lost sales, market share, profit and*

[1] Section 269TAE(2AA) of the Act refers.

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value" due to the alleged dumping.[2] On proper analysis, we submit that the circumstances of this investigation do not allow for such findings to be made with regard to Korean exports of RIC. Indeed, from our observations with respect to POSCO's position, we also hold the view that a finding of material injury having been caused by exports from all of the countries that the Applicant has "bundled up" in this investigation to be more than doubtful.

We outline the reasons for POSCO's views with respect to these matters as now follows:

With regard to the separate assessment of the alleged "dumping" of the goods in the POI, POSCO requests that the Commission have regard to information that is truly "relevant", and on assumptions that are clearly and fairly available, in arriving at its findings.

1 POSCO's effect on the Australian market was insignificant

During the POI, POSCO only exported **[CONFIDENTIAL TEXT DELETED – number]** tonnes of RIC to the Australia. On the basis of the understanding that the Australian market has a capacity of **[CONFIDENTIAL TEXT DELETED – number]** MT, this means that POSCO's RIC represented only **[CONFIDENTIAL TEXT DELETED – number]**% of the Australian market. Additionally, based on the understanding that the Applicant's sales represented 80% of the market, this means that POSCO's sales only represented **[CONFIDENTIAL TEXT DELETED – number]**% of the Applicant's sales and only **[CONFIDENTIAL TEXT DELETED – number]**% of imports in the POI.

There are two important things to note in this regard.

Firstly, these are estimates. If it is the case that dumped imports from a country comprise less than 3% of the total volume of imports in a given period of investigation, when expressed as a percentage of total imports of the goods under consideration, the investigation concerned must be terminated.[3]

Based on our *estimated* calculations, POSCO's total volume of exports **[CONFIDENTIAL TEXT DELETED – expression of degree and number]**% of import volume. Thus, if it ultimately transpires that a dumping margin is assessed, on the basis of "relevant information" as we have referred to above, but the actual information available to the Commission establishes that dumped exports from Korea subject to this investigation do not meet the 3% threshold, then the Commission must terminate the investigation as against Korea.[4]

We would ask the Commission to consider and reassess POSCO's volumes on this basis as the investigation proceeds and as the Commission's calculations with respect to both the alleged dumping and the supply of imports to the Australian market in the POI are refined and verified.

Secondly, regardless of the *de minimis* question, the nominal nature of POSCO's exports, in terms of their effect, is not much changed by considering whether the dumped exports are above or below the 3% level. POSCO's exports must not automatically be considered to have caused material injury if

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[2] Pages 23 and 25 of *Consideration Report No. 416 Application for a Dumping Duty Notice in Relation to Steel Rod in Coils Exported to Australia from the Republic of Indonesia, the Republic of Korea and the Socialist Republic of Vietnam* ("the Consideration Report").

[3] Section 269TDA(4) refers.

[4] In this regard we note the need for the Commission to consider the rule set out in Section 269TDA(5)(c) as well.

they were above that volume threshold. The factual enquiry as to whether that was the case still must be undertaken and accomplished by the Commission, in order to make a positive finding of causation with respect to POSCO's minimal export volume. This minimal level of engagement by POSCO in the Australian market in the POI must still be factored into the Commission's consideration as it undertakes its assessment of whether imports from Korea could have caused material injury to the Australian industry. The Applicant controls over 80% of the market. POSCO's export volume was very small in this context. We submit that it is highly unlikely that POSCO's exports could have caused material injury in the required sense. Our client asks the Commission to carefully consider this aspect in light of the facts as they are presented and verified during the investigation, and our client's further argumentation below.

2 Supply alternatives in small volumes are inevitable and not injurious

POSCO does not understand how the Applicant can maintain that it has suffered injury in the form of lost sales volume or market share. The information in the Consideration Report reveals that the Applicant's sales volume and market share were greater in the POI than they had been at any point over the injury analysis period. The only basis for the injury allegation is that imports from the subject countries expanded their market share over 2016 *"at the expense of the Australian industry and other countries*".[5]

It is not clear why it is considered that the increase in subject exports occurred *"at the expense*" of the Applicant. To reiterate, OneSteel's sales volume and market share were at their highest point in the POI. The injury aspect of this set of facts appears to be based around the fact that there was a *"significant increase*" in imports from the subject countries.[6] Perhaps the case being put is that in the absence of these imports, the Applicant would have sold even more RIC? POSCO would suggest that this is not a logical or fact-based way in which to assert that material injury has been suffered. The argument therefore falls short of the requirements of Section 269TAE(2AA).

That there was an increase in the exports from the subject countries during the POI is not surprising. Following the initiation of the investigation that led to the imposition of dumping duties on imports from Indonesia and Taiwan, there was a similar substitution effect. This is attested to by the Applicant itself:

> *Initially, Dumping Investigation No. 240 had a positive impact on Australian industry sales volumes, with the Australian industry regaining lost volume in the April to June 2014 and July to September 2014 periods. However, as the volume of dumped imports from China began to flow in the July to September 2014 period, then the Australian industry again began to experience a decline in sales volumes in the October to December 2014 period.*[7]

This is a telling extract. When, whether legitimately or otherwise, dumping duties fetter competition from one source of RIC, the Australian market will look to other sources.[8] This is because not all downstream users have the ability to obtain competitively priced RIC from OneSteel, or are excluded from supply altogether because of other factors that OneSteel might insist upon in its commercial arrangements with them. Simply because dumping duties are imposed on a large number of sources does not shutdown the operation of the market. Absent any supply from other sources, the Applicant would be a monopoly seller in Australia, which is not an outcome that is either mandated or

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5 Consideration Report, page 20.

6 Consideration Report, page 19.

7 *Application for the Publication of Dumping and/or Countervailing Duty Notices – Rod in Coils Exported from the People's Republic of China*, page 33.

8 POSCO notes that the *initiation* of the investigation led to a substitution away from the subject exporters. This again goes to underline the pragmatic nature of the applicant's use of the anti-dumping mechanism. Whether or not the allegations are ultimately successfully, there is always an adverse effect on the subject exporter's business, and therefore a benefit to the Australian industry.

encouraged by the anti-dumping system, and which would not be the preferred outcome for anyone other than OneSteel.

The competitive impacts of supply restrictions are even more serious in the downstream markets, in which many importers must necessarily compete with the Applicant's related distribution entities. It has been established that these entities:

- purchase the majority of OneSteel's RIC; and[9]
- do not purchase RIC from any other sources.[10]

Therefore, absent competition, OneSteel's related distributors would weld significant market power over importers in the markets for downstream products, such as reinforcement mesh, general purpose wire, rope, springs and specialised fine wire.

Given these circumstances, independent entities will of course seek to secure other sources of RIC when one source is no longer feasible. It is critical to their ongoing commercial survival that they are able to do so. This was the case when the original investigation was initiated against exports from Indonesia, Taiwan and Turkey. It was also the case when the investigation was initiated against exports of RIC from China. Exporters having the ability to supply end-users and traders in the margin between the Applicant's market dominance and the total market requirement is not behaviour that is materially injurious to the Applicant. All of which to say that the assumption on the Applicant's part that it should have increased its sales volume further than it has done does not respect commercial logic, the dynamics of markets and the interests of any entity besides the Applicant itself.

The second thing to note is that the increase of exports from the subject countries occurred around the same time as the Assistant Minister decided on 19 August 2016 that the original decision to impose anti-dumping duties against Indonesian RIC was incorrect, as those exports had not caused material injury to OneSteel. This had the effect of making imports of RIC from Indonesia far more competitive then they had previously been. Again, this increase is entirely explicable, and would have occurred whether or not the goods were dumped.

Finally, even if all of the foregoing was not the case, we again submit that POSCO's exports were insignificant in market terms and could not have caused material injury in the form of loss of sales volume, or lost market share. As noted, POSCO's share of the market was less than 1% in the POI. Absent POSCO's RIC, on the assumption that the Applicant's RIC was purchased instead, the Applicant's market share would not have changed materially.

3 The Applicant's price and profit information is not indicative of material injury

POSCO respectfully submits that looking at price in isolation is a myopic way of assessing the performance of the Applicant. Price movements themselves do not indicate any form of injury. After all, it is clear from the Consideration Report that the Applicant's prices for RIC were at their highest in 2013, a year in which its profits and profitability for RIC were significantly lower than they were in the POI.[11] Lower prices, in the absence of something else, are meaningless to the question of whether injury has been suffered.

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9 *Report No. 301 – Alleged Dumping of Steel Rod in Coils Exported from the People's Republic of China*, page 9 notes that "*OneSteel disclosed that the majority of its sales of RIC were to related parties over the investigation period…".*

10 *Investigation 301 – Alleged Dumping of Rod in Coils exported from the Peoples Republic of China Visit Report – Australian Industry*, notes at page 18 that *"The related OneSteel entities source their entire supply of RIC from OneSteel*".

11 Consideration Report, page 21.

What is important is an assessment of the interactions of cost and price over the injury analysis period. In this regard, it is clear that movements in price are strongly correlated to movements in costs (ie, the cost to make and sell, or "CTMS"). When the CTMS increases, the Applicant's price increases, and when it decreases, the Applicant's price decreases. The decreased price in the POI is evidence only of the Applicant's historically low costs of production in the POI, not of any form of price injury. The key question then revolves around the Applicant's profit and profitability figures, as are indicative of its overall performance.

Would the Applicant have sold the goods at a profitable level in the absence of the allegedly dumped goods? POSCO does not believe so. Indeed POSCO does not believe that the evidence discloses any meaningful relationship between dumping and the Applicant's levels of profit and profitability. The reasons for this belief arise from the following facts:

- the Applicant has not sold RIC profitably for any sustained period of time since at least 2010;[12]

- over the seven years between 2010 and the POI, the Applicant's RIC was at its least unprofitable and had the lowest level of unprofitability between 1 July 2014 and 30 June 2015, which is the only period in which injurious dumping has been found to have occurred.[13]

No relationship between "dumping" and the Applicant's profits and profitability is demonstrated. The Commission has over seven years of verified information that supports the finding that, in the absence of dumping, the Applicant would remain unprofitable in its sales of RIC.[14]

This may be a strange outcome for a commercial operation, but POSCO considers there may be a commercial rationale for it. Again, the Applicant's related distribution entities purchase the majority of the Applicant's RIC, and do not purchase RIC from other sources. Low prices to these entities make it easier for them to compete in the downstream markets, and have the added benefit of being good ammunition for dumping claims. The Commission is requested to consider whether the losses are injurious from a corporate group perspective. If they are not, then no injury should be found to have occurred.

POSCO notes that previous investigations have considered that the sales price between the Applicant and its related entities were "arms length transactions". To be clear, this is not the question before the Commission. The question is whether allegedly dumped imports have caused injury. In circumstances where the majority of the Australian industry's production is purchased by related entities, *which do not purchase RIC from other sources,* POSCO considers that there are serious questions as to how these sales could be "injurious" in any real, factual sense of the word. Ultimately, POSCO does not consider that the Australian industry has suffered material injury in the form of price of profit injury.

POSCO offers the opinion that the Applicant and its related entities have been maintaining the operations of an internationally inefficient steelmaking operation by pricing steel between themselves in a way which enhances the ability of the Applicant's related entities to compete against unrelated entities for the business of end user customers that compete in markets for downstream goods. In this way the Applicant walks a tightrope between making enough money to remain a "going concern" and satisfy its financiers, and putting its own related entities out of business. Competition in the form of imported RIC therefore *supports* the market in which the Applicant is engaged. Without it,

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12 *Final Report No. 240 –Alleged Dumping of Rod in Coils Exported from the Republic of Indonesia, Taiwan and the Republic of Turkey*, page 46.

13 Consideration Report, page 21.

14 With regard to the POI itself, the profit and profitability figures are both higher than they were in 2013, a period which with foresight the Commission will now recognise was not materially impacted by dumping. Accordingly, POSCO would submit if any products were dumped in the POI, there affect was not materially injurious.

downstream products would flood into the country, leaving the Applicant's own fabrication entities exposed to competition from fabricated products and its distribution entities with no customers to sell to. This is not a phenomenon or an aberration. It is how markets work. Where the balance is not maintained, the Applicant can expect to find that imports of further downstream fabricated products will increase, and it will sustain further losses in price and volume terms.

Extending the restrictions that the Applicant has already placed on exports - in the form of the existing dumping measures – would go too far. It would disrupt the balance to which we have referred, and make no difference to the Applicant's financial performance. The minimal level of imports of which the Applicant now complains have no deleterious effect on it - indeed, they preserve the very market on which the Applicant depends.

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Accordingly, POSCO submits that its exports did not cause the Australian industry material injury, and requests the termination of the investigation as against POSCO at the soonest possible convenience.

Yours sincerely

Daniel Moulis
Principal Partner