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Director Operations 1
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

**Dumping investigation into rod in coils exported from the
Peoples Republic of China**

Dear Director,

This submission is made on behalf of Stemcor Australia Pty Ltd (Stemcor) in response to the submission of 11 December 2015 by the applicant in the current dumping investigation into rod in coil exported from the Peoples Republic of China (China).

Stemcor is an independent steel trader and importer of rod in coil sourced from China. Stemcor plays a pivotal role in the Australian steel market, acting as a trading intermediary and an alternative supply option for Australian processing companies who are either unable to source their requirements locally, or unwilling to commit 100% of their volume to a single local manufacturer.

As such, Stemcor has in one way or another, been involved in the numerous dumping and countervailing investigations involving steel products over the past decade and prior. Stemcor has at all times cooperated fully with the Commission's request for information in those investigations and has been respectful at all times with regards to the imposition of both provisional securities and any subsequent interim dumping duties.

As far as Stemcor is aware, all other major Australian importers of steel involved in the Commission's investigations have also been both cooperative and respectful of the final decisions.

Stemcor wishes to respond to the two key allegations raised by the applicant in its submission of 11 December 2015. Those allegations are:

- i) that following the preliminary decision to impose provisional securities on 3 December 2015, the continuation of price offers for rod in coil sourced from China at prices below the applicant's contemporary selling prices, is indicative of importers circumventing the intended effect of the duties and of a continuation of injurious exports; and
- ii) that the alleged circumvention is facilitated by the provisional securities being in the form of ad valorem duty, and that as such, alternate methodologies should be utilized.

Firstly, it is important to highlight that section 269ZDBB of the *Customs Act 1901* (the Act) defines circumvention activity as:

- i) Assembly of parts in Australia;
- ii) Assembly of parts in a third country;
- iii) Export of goods through one or more third countries;
- iv) Arrangements between exporters;
- v) Avoidance of intended effect of duty.

On 26 February 2015, the *Customs Amendment (Anti-Dumping Improvements) Regulation 2015* expanded the anti-circumvention framework by further prescribing the slight modification of goods as a circumvention activity.

Circumvention activity in the form of avoidance of intended effect of duty occurs if the following exists:

- a) goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies;
- b) the exporter is an exporter in respect of which the notice applies;
- c) either or both of sections 8 and 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;
- d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;
- e) the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.

It is apparent to Stemcor then that the applicant considers that the intended effect of duty is to remedy all injury being suffered by the Australian producer, by ensuring that the prices of imported products are not undercutting the local producer's prices. This view is confirmed by the applicant's statements in its submission to the Anti-Dumping Review Panel's review of rod in coil exported from the Republic of Indonesia, where it submits 'that

the intended effect of anti-dumping measures is to ensure export prices are non-injurious to the effected Australian industry'.

Stemcor agrees with the view submitted by the Indonesian exporter in that appeal, that the applicant's position is *'a deeply flawed view and reflects a concerning lack of importance placed on the fundamental principles underpinning the international and domestic anti-dumping frameworks.'* Anti-dumping measures are not intended to ensure that export prices are non-injurious. Their sole purpose is intended to only remove the effects of injurious dumping – that is, to remedy only that part of injury found to be caused by dumping, and not to remove all injury being experienced, including those parts caused by other known factors such as non-dumped exports.

To highlight by example, where an exporter's prices are found to be dumped by a margin of 3%, and the export prices are also found to have undercut the Australian industry's prices by a margin of 10%, the maximum amount of dumping duty that can be imposed is the full 3% margin of dumping. In that example, even after the imposition of a dumping duty rate, export prices are likely to continue to undercut the Australian producer's price by 7% and continue to remain injurious. This remaining amount of injury caused by the prevailing export prices cannot be attributed to dumping and must not be addressed by the imposition of an anti-dumping measure. As such, the Commission's preliminary decision to impose provisional securities on exports of rod in coil from China at the full preliminary dumping margin of 13.1%, is having the intended and desired effect of addressing and removing injury caused by dumping whilst the investigation continues, and no more.

By contrast, the applicant's request for the imposition of a fixed and variable duty is intended to introduce a minimum floor price in addition to the full margin of dumping, clearly aimed at removing all injury, which is in excess of and goes beyond the objective of either the provisional security or interim dumping duty. As Stemcor demonstrates below, the minimum floor price works as an effective barrier to entry in circumstances where global prices are falling. For these reasons, Stemcor submits that the Commission should dismiss the alternative options being presented by the applicant as their effect goes beyond that intended by the Act.

The applicant provided a supplementary submission on 20 January 2016 in the form of a presentation to the Commission, which outlines its further views for the imposition of a fixed and variable form of measure. In its presentation, the applicant provides contrasting examples of the duty collection method stemming from a fixed and variable form of duty and an ad valorem form of duty.

Stemcor wishes to firstly highlight that the examples referred to in the applicant's presentation presuppose a flat and static global steel market in which prices neither go up

nor down. However commoditised products such as rod in coil and steel products more generally, never remain flat and are always trending either upwards or downwards.

As the Commission has already neatly explained in its final report into rod in coil from Indonesia, Taiwan and Turkey¹:

The Commission notes that the rod in coils market displayed considerable price volatility over the investigation period. As an example the export prices of a verified, non-dumping exporter varied by 18 per cent over the investigation period. The Commission anticipates that the rod in coils market will continue to demonstrate price volatility, and is satisfied that an ad valorem duty is the most appropriate form of duty in this environment.

The Commission is of the view that a combination method is not appropriate in this environment as it become less effective when a market experiences rising prices and punitive when the market experiences falling prices. The ad valorem method avoids these 'effective rate' impacts.

The Commission again addressed this specific issue in its final report into steel reinforcing bars exported from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey²:

Where markets are falling, the combination method can be less desirable because the ascertained export price (which acts as a floor price) is set using historical data obtained in the original investigation period. In a market where prices fluctuate, the ascertained export price can quickly become out of date, however remains as a basis for calculating duty. For this reason, whilst delivering the protective effect, in a falling market, the combination duty method can have adverse effects on downstream industries and can lead to increased reviews.

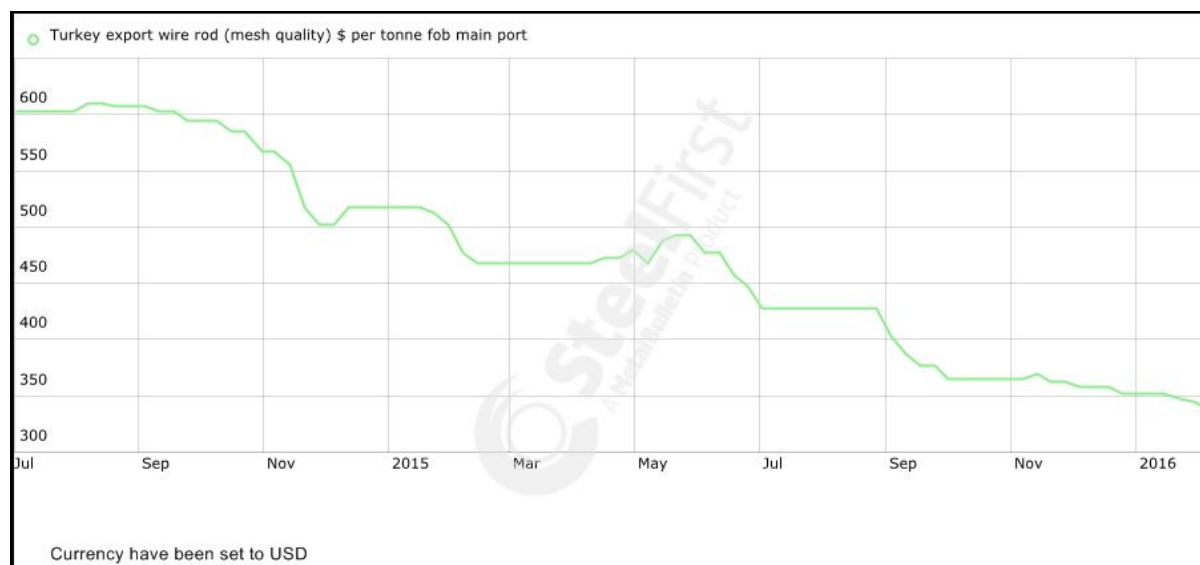
A review of the chart below, which relies on Turkey FOB export prices claimed by the applicant to be indicative of market prices, shows the clear trend for global pricing of rod in coil over the past 2 years has been falling average prices as a result of falling average steel making costs and inputs. In particular, it shows that whilst prices were falling over the investigation period, prices since the end of the investigation period have continued to fall. In this scenario, export prices and normal values determined during the investigation are already outdated.

These price trends are consistent with the Commission's view that fixed and variable duties were not appropriate given that price volatility for rod in coil was expected to continue. The effect of imposing a fixed and variable duty in the circumstance of falling global prices,

¹ Final Report 240 – Rod in coils from Indonesia, Taiwan and Turkey, page 65

² Final Report 264 – Steel reinforcing bar from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey, pages 104-105.

would be the introduction of an artificial uplift in market prices well above contemporary costs and contemporary normal values.



Source: Steelfirst.com

Stemcor also agrees with the Commission that this outcome would result in adverse effects on downstream industries and in its view, would go beyond the intended effect of duties by remedying injury not attributable to dumping.

Profitability of Stemcor's imports

As previously noted, Stemcor has always fully cooperated with the Commission's investigations and requests for information. This has involved on multiple occasions having its accounting records interrogated by the Commission and detailed purchasing and selling records verified. In each circumstance, the Commission has found that sales of the investigated goods were profitable.

Therefore, there is no basis to the applicant's mere assertion that provisional measures applying to imported rod in coil from China are being circumvented. To demonstrate this, Stemcor invites the Commission to visit and conduct further verification of its imports and sales, post the imposition of provisional measures on 1 December 2015. The evidence will clearly show that its sales are profitable after taking into account the provisional measures imposed by the Commission.

Yours sincerely

John Bracic