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24 November 2017

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

By email

Dear Patrick

POSCO - alleged dumping of rod in coil from Korea
Comments regarding Statement of Essential Facts

As you know, we represent POSCO in this investigation.

POSCO notes the content and conclusion of *Statement of Essential Facts No. 416 - Alleged Dumping of Steel Rod in Coils Exported to Australia from the Republic of Indonesia, the Republic of Korea and the Socialist Republic of Vietnam* ("the SEF"), specifically that the goods exported from Korea did not caused material injury to OneSteel Manufacturing Pty Ltd ("the Applicant").[1]

This is the correct outcome. POSCO's sales of rod-in-coil ("RIC") to Australia amounted to less than **[CONFIDENTIAL TEXT DELETED – number]** of the Australian market during the period of investigation ("POI"). POSCO's exports of RIC to Australia, which were *ad hoc* and irregular, did not have an impact on the Applicant, and certainly did not have an impact that could be considered to be *material*.

POSCO also notes that it has been found to have been dumping on the basis of "all relevant information", and that the dumping margin from the Consideration Report has been adopted by the Commission. POSCO notes that its decision not to respond to the exporter questionnaire was driven by commercial considerations, and does not accept this finding to be accurate or correct. POSCO further notes that the Consideration Report overestimated the dumping margin for Vietnam by 20.2% and the dumping margin for Indonesia by between 19.2% and 28.8%. These exaggerations underline the inaccurate nature of dumping findings that are sometimes made when reference is had to information that is not the most relevant information for the task.

Notwithstanding the Commission's clear intention to terminate this investigation, POSCO now offers its further comments regarding the material injury findings in this letter.

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1 The SEF, page 62.

1 The Applicant has not suffered volume injury

POSCO supports the conclusion that the Applicant has not suffered injury in the form of volume injury or loss of market share. Indeed, based on the trends evidenced in the visit report with respect to the Applicant ("the Industry Report") and in earlier investigations, it is evident that during the POI the Applicant's sales volumes were at a historical high. In these circumstances it is clear that no volume injury had been suffered by the Applicant.

In support of this recommendation, POSCO would also like to emphasise the following point made by the Applicant:

> *OneSteel explained that as a manufacturer there is a commercial understanding between itself and its non-related customers that they will purchase a significant proportion of their RIC requirements from OneSteel. OneSteel also explained that related parties would not consider purchasing RIC from any source other than OneSteel.*[2]

The significance of this is quite plain:

- The majority of sales in the Australian market – those to the Applicant's related entities – will only ever be made by the Applicant.
- In relation to the rest of the sales, the Applicant's own arrangements with its non-related customers reflect the commercial reality outlined in POSCO's initial submission – those customers cannot be solely reliant on the Applicant as a source of supply.
- Finally, with regard to the non-related entities that the Applicant does not sell to, it seems clear that the Applicant would not change this position unless those entities came to the same "understanding" as referred to above. Anecdotally, it is said that there are some non-related entities that the Applicant would never sell to, because it does not wish to do so, by reason of corporate policy, or because it cannot do so, because of capacity constraints.

These propositions were not fully reflected in the SEF, but we feel that the implications of these propositions for any allegation of volume injury need to be stated clearly. The Applicant will only sell to customers that source all or a prescribed (*"understood"*) majority proportion of their RIC requirement from the Applicant. This is a commercial choice. Its sales have increased in the POI. The Applicant is not losing out on sales to non-related entities for any other reason than the fact it has decided not to supply them, or is unable to supply them. This cannot be considered to be injury caused by imports.

This supports the finding that the Applicant did not suffer volume injury.

2 The Applicant has not suffered price injury

The SEF makes the preliminary finding that although the Applicant has suffered price injury that injury was not caused by dumped goods.[3] While POSCO agrees with the ultimate outcome, POSCO disagrees with the suggestion that the Applicant suffered from price injury.

POSCO reiterates the submission included in its letter of 14 August 2017, to the effect that the price and profit information is not indicative of material injury caused by dumping. It is highly unusual for an

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[2] *Investigation 416 Alleged Dumping of Steel Rod in Coils Exported from the Republic of Indonesia, the Republic of Korea and the Socialist Republic of Vietnam, Visit Report – Australian Industry OneSteel Manufacturing Limited (subject to a deed of company arrangement)*, page 20.

[3] The SEF pages 47 – 48 and page 54.

entity to be consistently unprofitable over such a long period of time – particularly in circumstances where it is clearly and indisputably the dominant player in the market. In POSCO's view, this calls for a factual of the flow-on effects from the pricing between the Applicant and its related entities and the implications of this for the larger OneSteel group. These related party sales reflect the majority of the Applicant's sales. POSCO does not believe "injury" can be found to have occurred in circumstances where the supposed price depression or suppression actually benefits the Applicant's related entities, by providing them with major material inputs for less than adequate remuneration.

The SEF dealt with this issue summarily, by finding these inter-company sales were "arm's length" sales.[4] What this means in detail is unclear. Section 269TAA of the Act provides an explicit set of provisions that define when transactions will be considered to be "arm's length" for the purposes of Part XVB of the Act. This current investigation is being undertaken under Part XVB of the Act, therefore, in finding that these related party transactions are arm's length sales we are led to understand that these transactions have been assessed under Section 269TAA of the Act. However, there is no obvious application of this definition to the Applicant's related party sales. If this Section has not been applied, then what is the meaning of the term "arm's length"?

Sales between the Applicant and its related entities were not profitable. This "unprofitability" is that of the Applicant, which is OneSteel Manufacturing – it is not the unprofitability of the group of which OneSteel Manufacturing forms part. As POSCO indicated in its letter of 14 August 2017, the Applicant's unprofitability is likely to have been to the benefit of the entire group in which the Applicant operates. We reiterate our client's strongly held view that the Applicant is in the position to decide where it earns its profit in its overall group structure, and that the "support" of an anti-dumping system is best utilised by the Applicant by attacking steel products in the form they are imported at the Australian border.

In addition to this, neither the Industry Report nor the SEF indicates that there is any form of negotiation between the Applicant and its related entities. Given the strictures in which the related entities are required to operate in – only being able to source material from the Applicant – it is hard to see *how* they could negotiate. The fact that they cannot purchase RIC from any other sources means that there is, functionally, no substitutable goods in relation to these sales. A buyer which only has one seller available to it has no leverage when negotiating. It cannot, for example, seek supply from another source. It can either accept the prices from the seller, or not purchase the goods at all. So, the Applicant is a monopolist with regard to the majority of its sales. Therefore, it is within the Applicant's power to charge higher prices with regard to these sales. At the very least, the Applicant does not need to sell RIC to its related entities at a loss, it simply chooses to do so.

It is unclear why the SEF considers these sales – which are unprofitable and not subject to negotiation – to be "arm's length". These sales represent the largest portion of RIC sold in the Australian market. A proper analysis of them should be undertaken for material injury purposes. For very many years it seems that the Applicant has been fighting a battle which is in truth taking place in a downstream market – the market for *fabricated* steel products – at the upstream *unfabricated* level. The interests of the Applicant as part of a wider group are best served by snuffing-out competition in the unfabricated steel products market (in this case, RIC) through controlling the majority of its sales through related parties, through high volume off-take requirements as a condition of supply to unrelated customers, and through anti-dumping protection against imported unfabricated products.

In summary, the Applicant's related entities will be required to purchase from the Applicant *irrespective* of the price offered by the Applicant. This means that the impact of import prices on these prices is purely by reason of the Applicant's choice, rather than one driven by necessity. It would be fully open for the Applicant to make these transactions at cost (or even cost plus). It has

[4] Industry Report, page 23.

simply decided not to. The only reason to decide not to sell these goods profitably, or at least at cost, is that it benefits the related parties not to do so. This is not injury in any real sense of the word.

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POSCO agrees with the finding that its exports have not caused the Applicant material injury. We respectfully request the termination of the investigation as against POSCO's exports at the soonest possible convenience.

Yours sincerely

Daniel Moulis
Principal Partner