Dear Mr McGovern

Alcoa: Investigation into Grinding Balls (Case 316)

We act for Alcoa of Australia Limited (Alcoa). We refer to the Australian Anti-Dumping Commission (ADC) investigation into grinding balls exported from the People’s Republic of China (China), following an application lodged by Donhad Pty Ltd (Donhad) and Commonwealth Steel Company Pty Limited (Moly-Cop) (together, Applicants).

1. Executive summary

1.1 Our client considers that the imposition of anti-dumping measures in respect of grinding balls:

(a) unduly restricts its ability to choose between competing suppliers and entrenches the dominant market position of the Applicants (see section 3);

(b) will force it to purchase grinding balls produced by Australian industry in cases where it needs or prefers grinding balls due to their distinct value propositions (see sections 4 and 5); and

(c) cannot be recommended by the ADC where no material injury to Australian industry is attributable to any dumping by exporters (see section 6).

1.2 The Commissioner of the ADC should therefore recommend that no anti-dumping measures be imposed in respect of grinding balls exported from China.

2. Background

2.1 Our client’s Australian operations represent the world’s best integrated bauxite mining, alumina refining and aluminium smelting system, adding value to Australia’s local, state and national economies at every stage. Our client’s operations support around 4400 direct jobs, predominantly in regional Australia.

2.2 Our client purchases grinding balls both from Donhad and Moly-Cop.

2.3 Our client views the present application as an attempt by the Applicants to prevent effective competition. Our client does not believe that grinding balls are being imported at dumped prices and does not believe that the Applicants have suffered material injury. The Applicants have merely brought the dumping complaint to frustrate any prospective supply by exporters such as Moly-Cop so they can maintain their dominant position in Australia.
2.4 Protecting the Applicants from competition would harm Australian businesses such as our client's. The Applicants are established and successful companies who enjoy a dominant market share for grinding balls in Australia. Moly-Cop is the largest supplier of grinding media in the world.

3. Supply risk and plurality of supplier choice

3.1 During the investigation period, Australian industry maintained control of over 75% of the Australian market.\(^1\) The modest increase in market share for \(\text{imports}\) over the investigation period reflects a desire among Australian customers for increased competition. This is a reaction to the Australian industry's desire to dominate the local market.

3.2 The ongoing viability of our client's operations depends upon its ability to source grinding balls at competitive prices and through a reliable supply chain to minimise supply risk. In this way, it is critical to our client's longer term needs that it be able to readily source grinding balls both locally and internationally by way of alternate supply.

3.3 Supply interruptions (including production and/or supply chain) have an immediate adverse effect on our client's ability to produce alumina (from production loss to outright production stop).\(^2\) Moly-Cop was nearly placed into administration earlier this year,\(^2\) and 94 other entities of its parent company, Arrium Limited, are in voluntary administration. This does not inspire confidence in the ability of Australian industry to guarantee continued supply. It should be readily appreciated that if, for any reason, the Applicants' grinding ball production was affected or curtailed, or demand exceeded their capacity, our client would not be able to source alternate grinding balls to replace the Applicant's grinding balls without unacceptable delay.

Grinding balls must be customised to our client's specifications and it is not viable for our client to use generic grinding media except as an emergency measure. In the last 8 years our client has assessed and reviewed\(^3\) with limited success.

3.4 It is also likely that, if \(\text{imports}\) exporters were forced out of the Australian market, our client will have to accept inflated prices set by Australian industry who would or may take advantage of their dominance in a protected industry.

3.5 This uncertainty forces our client to minimise the risks to its own operations by seeking out alternate suppliers. This is prudent and ordinary commercial practice. Our client fears that the imposition of anti-dumping measures will make this practice uncommercial and endanger the supply of grinding balls to Australian miners at prices that allow mining to be viable.

4. Likeness of product and qualitative differences between local and overseas grinding balls

4.1 Grinding ball quality is of critical importance to our client's business. In particular, our client must have large volumes of high-quality grinding balls that meet its specification\(^1\).

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\(^1\) See Statement of Essential Facts at 7.4.2 Fig. 2.

4.2 The Commission considered that the goods purchased are like goods. It considered that goods could be like goods even where 'each manufacturer may market a distinct value proposition'.

4.3 Even if goods are goods 'closely resembling' goods manufactured by Australian industry, the Commission should reject the Applicants' assertions that goods are 'interchangeable' or are 'manufactured via similar production processes'.

4.4:

(a) 

(b) Quality and performance differences

4.5 In short, the qualitative differences are marked and it is too simplistic to characterise product as 'like'. Imported product offers our client indispensable advantages, including:

4.6 The Statement of Essential Facts raises the Australian industry's lack of technological competitiveness as a potential alternate cause of material injury not attributable to dumping. It does not adequately explain on what basis it can dismiss this cause of injury. It appears to conclude that dumping margins are so high that they cannot be explained simply on differences in quality between Australian and grinding balls. This conclusion fails to appreciate the importance of the factors listed in paragraph 4.4 to our client and other Australian customers.

5. Historical pricing behaviour

5.1 Where grinding ball imports from and other countries have increased in the past, this has been in response to the serious problems posed by the Applicants' dominance in the market. These problems are likely to recur if anti-dumping measures are imposed.

5.2 For 14 years until 2005, our client's grinding balls were supplied exclusively by Donhad.

3 Statement of Essential Facts at 3.6.
4 Ibid.
5 See s 269T of the Customs Act 1901 (Cth) (Act).
6 Application at p 12.
7 At 8.10.5.
6. **Material injury**

6.1 Our client considers that the ADC ought not to recommend the imposition of anti-dumping measures as the Australian industry has suffered no material injury. Material injury has not occurred because:

(a) the Australian industry's return on investment is currently increasing;\(^8\)

(b) the Australian industry's sales volume increased over the injury analysis period and over the investigation period, and continues to increase;\(^9\)

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\(^8\) Statement of Essential Facts at 7.7.

\(^9\) Statement of Essential Facts at 7.4.1, 8.4.1.
(c) Chinese import volumes have decreased in Q1 2016\(^{10}\) and are likely to continue to do so. There was no real increase in Chinese import volumes until 2015, even though the Applicants allege material injury starting from 2013–14.\(^{11}\) In any case, the increase in Chinese import volumes between 2015 and 2016 is irrelevant because the size of the increase and the conditions under which it took place are not such as to cause injury;

(d) the Australian industry's market share 'remained relatively stable'\(^{12}\) across most of the injury analysis period, with a single aberrant year in 2014–15. This singular reduction in Australian industry's market share is anomalous and relatively small. Moly-Cop also appeared to consider the 2014–15 market share change an aberration when it predicted in 2015 that 'the Moly-Cop business remains well positioned in all regions to capture at least its high share of the expected market growth'.\(^{13}\) It made a similar prediction in 2014.\(^{14}\) Moly-Cop nonetheless asserted that it suffered material injury from 2013–14 to the present;\(^{15}\)

(e) the Australian industry's profit and profitability have clearly increased over the injury analysis period.\(^{16}\) The ADC has disposed of the question of material injury to profit and profitability at ch 8.7 of the Statement of Essential Facts by referring to the finding it made at ch 7.6. The finding at ch 7.6 was that the Australian industry's profit and profitability declined during the investigation period. When considering material injury, however, the question must be whether the Australian industry suffered from reduced profits and profitability during the injury analysis period. Because the Australian industry enjoyed increased profit and profitability every other year during the injury analysis period, the ADC should correct its finding on this point. To examine only the profit and profitability trends in 2014–15 is contrary to the ADC's usual practice. It is an unfair and an unduly narrow approach. In particular, the industry practice of using long-term supply contracts has the effect of distorting changes to underlying performance in any given year. Long-term trends must be examined instead;

(f) there is no price depression or suppression. In our client's experience, the Applicants are able to charge a premium for grinding balls over

| redacted | To the extent that the Applicants' prices may have decreased, that decrease represents a normalisation of prices that previously exceeded cost plus fair margin. Those inflated prices were once borne by Australian employers such as our client because of the relative lack of competition among suppliers and duopolistic market control by the Applicants. In contrast, weighted average export prices from China have remained stable for at least five years.\(^{18}\) Now that there is competition from importers, prices reflect the fair amount one would expect in a competitive market; and

\(^{10}\) Statement of Essential Facts at 9.3.1 Fig. 5.
\(^{11}\) Application at p 24.
\(^{12}\) Statement of Essential Facts at 7.4.2.
\(^{13}\) Arrium Limited 2015 Annual Report at p 24.
\(^{15}\) Application at p 24.
\(^{16}\) Statement of Essential Facts at 7.6 Fig. 4.
\(^{17}\) Statement of Essential Facts at 9.3.1 Fig. 6.
\(^{18}\) Statement of Essential Facts at 9.3.1 Fig. 6.
over the investigation period, Moly-Cop has advertised:

(i) a ‘strong growth profile’;  
(ii) ‘solid earnings and cashflow’; and  
(iii) ‘stable margins’.

Moly-Cop is known to be highly profitable due to a historical lack of competition in the Australian grinding media market.

6.2 Our client continues to purchase large volumes of grinding balls from Donhad. From our client’s perspective, no injury has been suffered by Australian industry.

6.3 It is notable that the Applicants do not complain that dumping adversely affects their capital expenditure; stocks; cash flow; wages, labour productivity and conditions of employment; or investment and ability to raise capital. It may be readily inferred in these circumstances that the Applicants’ claim of alleged injury is hollow.

6.4 Our client further submits that any proved material injury would not continue. The Statement of Essential Facts concludes that ‘the continuation of price competition from dumped and subsidised imports from China is likely to have a continuing adverse impact (e.g. price undercutting) on the Australian industry, particularly if volumes continue to increase.’ This statement forms the whole of the ADC’s consideration of the question whether material injury will recur in the Statement of Essential Facts, even though there are reasons to doubt whether any material injury will continue, including:

(a) that Chinese import volumes of grinding balls are recently decreasing; and  
(b) that return on investment in the Australian industry, even if it has declined in the past in the ebb and flow of business, is currently increasing.

The ADC ought to closely reconsider the likelihood that any material injury will cease without the need for measures to be imposed.

6.5 Even if the ADC considers that material injury has occurred or will occur, that injury cannot be attributed to the exportation of goods where it is caused by a factor prescribed in s 269TAE(2A) of the Act. In this case, any material injury suffered by Australian industry is attributable to:

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20 Ibid.  
21 Ibid; Arrium Limited 2013 Annual Report at p 12.  
23 See ss 269TAE(1)(g), 269TAE(3) of the Act.  
24 At 9.5.  
25 Statement of Essential Facts at 9.3.1 Fig. 5.  
26 Statement of Essential Facts at 7.7.
(a) a desire on the part of Australian customers to ensure continuity of quality supply, diversity in their suppliers, maintain competition and avoid being controlled by a domestic duopoly;27

(b) a need for high-quality customised grinding balls that the Applicants cannot always satisfy (in particular for the reasons discussed above in section 4);28

(c) legitimate competition between the Applicants *inter se* or with their overseas competitors;29

(d) the transformation and decline of the Australian mining industry and resource prices, which are likely to reduce grinding ball prices;30

(e) the poor export performance of the Australian industry;31

(f) manufacturing in a market which has a comparative disadvantage in grinding media production;32

(g) the ebb and flow of the business cycle.33 Most salient measures of material injury have increased and decreased over the course of the injury analysis period, including:

(i) capacity utilisation;34

(ii) return on investment;35

(iii) profit and profitability;36

(iv) unit cost to make and sell;37 and

(v) market share,38 representing natural variation in business. This ebb and flow cannot substantiate the existence of material injury attributable to dumping; and

(h) other factors identified by Moly-Cop as being injurious, such as taxation and operational issues at customer mines.39

27 Section 269TAE(2A)(d) of the Act.
28 Section 269TAE(2A)(f) of the Act.
29 Section 269TAE(2A)(d) of the Act.
30 Section 269TAE(2A)(c) of the Act.
31 Section 269TAE(2A)(f) of the Act.
32 Ibid.
33 See Ministerial Direction on Material Injury made under the Act dated 27 April 2012.
34 Statement of Essential Facts at 7.7.
35 Statement of Essential Facts at 7.7.
36 Statement of Essential Facts at 7.6.
37 Statement of Essential Facts at 7.5.
38 Statement of Essential Facts at 7.4.2.
6.6 Most of the challenges that the Applicants face, reflected in 6.5 above, affect our client as well. Our client wishes the Applicants every success in overcoming them because our client depends on the Applicants. That dependence must be balanced with our client's need to secure grinding ball supply at competitive prices well ahead of its growth projects. Moreover, our client also faces challenges in that it will be competing against other customers, domestic and international, for the Applicants' product. This challenge is made all the more acute because [commercial-in-confidence — Alcoa market conditions]. In this way, our client contends that plurality of choice of grinding ball supply is essential. Mitigating supply risk has important strategic value to our client.

6.7 The application does not properly address alternative causes of injury. Its analysis of alternative causes of material injury is confined to a general, unsubstantiated assertion that there are no other injurious factors.  

40 This assertion is, on its face, very improbable. An assessment of injury must be based on positive evidence and involve an objective examination of the volume and impact of imports.  

41 It must be rigorous rather than speculative.  

42 The ADC should carefully consider the impact of the alternative causes of material injury listed in paragraph 6.5.

Yours sincerely

Zac Chami, Partner
+61 2 9353 4744
zchami@claytonutz.com

Our ref 11276/80177055

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40 Application at pp 29–30.
42 See the decision of the WTO appellate body in United States — Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (AB-2004-4) at [260].