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The Director – Operations 4
Anti-Dumping Commission
Level 35, 55 Collins Street
GPO Box 1632
Melbourne VIC 3001

INVESTIGATION 355: STEEL SHELVING UNITS FROM THE PEOPLE’S REPUBLIC OF CHINA

**Submission by the Australian industry – Response to Claims by
Geelong Holdings Limited (Geelong) and Romak Hardware Distributors (Australia) Pty Ltd (Romak)**

Dear Director

Summit Select Pty Ltd (Summit), the sole Australian industry member to the above investigation, wishes to lodge this submission in response to certain claims raised by Geelong and Romak to the investigation. These claims have been made in recent submissions to the Anti-Dumping Commission (the Commission), dated 18 and 26 August 2016 (Geelong and Romak respectively) and by Romak during the Commission’s importer verification visit with that company.

Excessive redaction

As an overall point, Summit submits that the public record versions of Summit and Romak’s submissions contain excessive redactions of information that the companies claim confidentiality over (particularly the Romak submission, which has entire pages of text redacted without any explanatory information).

Consequently, these submissions do not comply with the requirements for providing information to the Commission, as detailed in s.269ZJ of the *Customs Act 1901* (the Act) and published by the Commission in ACDN 2012-42 and ACDN 2013-17.

The Commission should review the submissions carefully to determine whether Geelong and Romak have complied with these essential requirements, before determining what information the Commission will have regard to as a result of these submissions.

Comments regarding the accuracy and veracity of the application

Both Geelong and Romak have raised concerns about the accuracy and veracity of information and data contained in Summit’s application. In brief, these claims relate to:

- alleged errors in the application’s index tables;
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- issues with the methods used to determine export price and normal value in the application; and
- issues with the evidence and argument provided to provide reasonable grounds that subsidisation and market situation exist.

Geelong and Romack have used claims about alleged errors in the application's index tables to attempt to cast doubt over the authenticity of Summit's application and claims, and to request that the Commissioner terminate the investigation as a result.

Aside from the fact that there is no legal grounds under the Act available to the Commissioner to make such a termination, the comments made by Geelong and Romak are either erroneous and/or stem from a lack of understanding of the application threshold and the purpose of the information in the application.

Firstly, the claims regarding the accuracy of the indices in the application appear to have arisen due to a misunderstanding by Romak and Geelong of how the indices, as required by the application, are calculated and their purpose. These indices have been correctly calculated and recorded, and Summit believes the Commission will already be aware of this misunderstanding by Geelong and Romak and have disregarded these inaccurate comments.

Further, Summit notes that the Commission has conducted verification of the data contained in its application (which these index tables are based on) and concluded that this data is complete, relevant and accurate. Summit does not consider anything further needs to be said about this matter.

In relation to how export prices and normal values were presented in the application, and the evidence provided to establish subsidies and market situation, it seems that Romak considers that the issues with the veracity of data in Summit's application cast doubt over the veracity of this information too, and that a termination is warranted. As discussed above, assertions about the quality of the data in Summit's application are unfounded and hence should be dismissed (aside from the fact that no such grounds exist for termination).

Claims that cost advantages in China, the China-Australia Free Trade Agreement, and changes in exchange rates have caused injury to the Australian industry

Summit notes that claims relating to Chinese cost advantages are irrelevant to this investigation. These claims show a lack of understanding of the anti-dumping system and legislation.

As the Commission is well aware, Summit's claim (as is the claim for all applications for dumping and/or countervailing duties) is not that Chinese products must not be allowed to be cheaper than Summit's due to cost advantages in China and that Summit should have some relief from this, but that the goods from China should be being sold to Australia at a price that is not *dumped* (i.e. less than their normal value) and that Summit should have relief from this dumping (and subsidisation). Summit makes no further comments on these irrelevant claims.

In relation to claims that fluctuations in exchange rates and the removal of import duty on Chinese goods after the implementation of the China-Australia free trade agreement have been the cause of Summit's injury, Summit notes that:

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- Summit has incurred injury from 2006 to date. The commencement date of the China-Australian Free Trade Agreement was February 2016.
- As stated in Summit's application, Summit maintain that steel pricing and exchange rates move together, therefore fluctuations in the exchange rate do not cause Summit injury.

Goods description – Tariff classification

Romak's submission has indicated that, because the tariff classification that the goods subject to this application fall into contains a large variety of goods that aren't subject to the application, there is a 'major difficulty' with compliance as a result and this has caused difficulties for the investigation that provides 'sufficient justification' that the investigation be terminated.

Aside from the fact that there is no legal grounds to terminate the investigation based on Romak's claims, which the Commission would be alert to, the fact that the breadth of the tariff classification means that products that aren't subject to the investigation will be included is not an uncommon nor fatal issue for an investigation into whether a dumping duty and/or countervailing duty notice are justified, and for collection of any duties that may result.

No further comments on this matter are considered necessary.

Goods description and excluded goods

Geelong and Romak make claims in their submissions about the description of the goods subject to the investigation, claiming that Summit has phrased that description in a way that, in practice, has excluded goods that Summit clearly intended to target in the application and excluded 'most imported steel shelving' such that 'there are no imported goods [that meet the goods description] which can be said to have caused damage to the Australian industry'.¹

These claims are because Geelong and Romak have assigned self-serving meanings to the specifically exempted goods identified as 'industrial shelving' and 'slotted angle shelving', which attempt to include the vast majority of the shelving units traded by those companies in those exclusions to claim they aren't subject to the investigation or any resulting duties. Romak and Geelong have used these claims to request the Commission terminate the investigation (again, there is no legal grounds for this, which the Commission will already be aware of, so Summit does not consider this needs to be addressed in any detail).

Further, Geelong states that, now the investigation has been started, the goods description cannot be altered nor can the exceptions from that description. Geelong claims that the Commission must interpret the terms 'slotted angle shelving' and 'industrial shelving' (from the exemptions) by giving them their ordinary meaning.

Summit agrees with the contention that the goods description cannot be altered now the investigation has commenced, and notes that it has made no claims for this. Further, while Summit is not clear of the legal or other basis for the claim that the Commission must prescribe the 'ordinary meaning' to the terms used to describe the excluded goods (Summit considers that the Commission must only provide a reasonable interpretation of these exclusions within the context of the investigation), the ordinary meaning of 'industrial shelving' and 'slotted angle

¹ Geelong submission at Page 7.

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shelving' in the Australian market is already very clear in any case, and Romak and Geelong's attempts to muddy their meaning is driven solely by an attempt to protect their own self-interests.

The issue of the meaning of 'industrial shelving' has been addressed separately by Summit in numerous submissions to the Commission (the most recent being dated 30 September 2016), and Summit will not endeavour to further address this here.

In terms of 'slotted angle shelving', Summit has also provided numerous explanations and evidence as to what constitutes the excluded goods, which clearly show that slotted angle shelving is made from a specialised product (slotted angle steel) which has an accepted industry meaning in Australia (both within the shelving industry and the steel and steel products industries generally).

However, Geelong and Romak continue to submit that 'slotted angle shelving' is an 'elusive'² term and that it can effectively refer to shelving made from steel with any kind of slots or slits in the steel legs of the shelving units, such as the rivet/keyhole boltless shelving units that are clearly covered by the application.

As evidence of its claims, Geelong has included copies of documents from the internet that picture bolted and boltless shelving that Geelong would clearly know is covered by the application and are made from steel legs with holes specifically designed for them to be used as the legs of bolted and boltless steel shelving units, but are referred to in various ways as 'slotted angle' units.

Firstly, Summit notes that not one of these examples appears to be from an Australian source, supporting Summit's contention that the term 'slotted angle' is not used in the Australian context to refer to shelving of the type pictured in these internet sites.

Summit again submits that the following.

- The term 'slotted angle' shelving does have an accepted meaning in the Australian shelving market and is never considered as Nut & Bolt or boltless shelving as defined in Summit's application.
- Slotted angle shelving is put together (like 'Meccano') with heavy duty nuts and bolts. It is generally for the commercial market and is used for staircases, mezzanines, shop fittings, bulk heads, bracing garage doors as well as storage shelves.
- An internet search of Australian sites will reveal that this is the case in the Australian market.
- The imported goods referred to in the submissions by Romak and Geelong are not slotted angle shelving they are rivet/keyhole boltless shelving.
- Slotted angle shelving is not sold by Romak or Geelong.
- Stormor, the trading division of Summit that manufactures slotted angle shelving ('Handy Angle') is one of a few remaining Australian manufacturers of slotted angle.
- **Attachment 1** is a copy of a brochure illustrating slotted angle products including shelving. **Confidential Attachment 2** shows examples of rivet/keyhole boltless shelving the subject of this application. **Confidential Attachment 3** is an internet search for slotted angle which clearly illustrates that slotted angle shelving is not the product imported by Romak and Geelong.

² Romak submission, at Page 14.



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Goods description – powder coated

Geelong and Romak make claims in their submissions that the Summit shouldn't have included anything other than galvanised steel shelving units as part of the goods description, as Summit only makes galvanised units. Both Geelong and Romak make claims that powder coated steel shelving units aren't 'like' to Summit's galvanised steel shelving units, and thus seem to claim that the investigation be terminated as a result³ or that 'the application should not have been accepted'.⁴

a) Summit's range

Summit agrees that its Australian-made steel shelving units⁵ are made of galvanised steel, and that it does not currently manufacture powder coated steel shelving units.

However, Summit is able to make colour bonded boltless steel shelving units if desired. Summit have manufactured colour bonded shelving units, but ceased production due to the cost of the steel which made Summit uncompetitive with the dumped and subsidised coloured imported shelving units.

b) 'Likeness'

Aside from the fact that there are no legal grounds for terminating an investigation based on the claims made by Geelong and Romak, in order for Summit to be able to lodge an application against the goods described by the application (and for a final decision to impose dumping and/or countervailing duties), what must be shown is that there is an Australian industry that produces 'like' goods to the goods covered by that description. There is no requirement that the Australian industry produce like goods to the full range of goods covered by the goods description, though Summit submits that its goods are 'like' to powder coated steel shelving units in any case.

There can be no dispute that Summit's galvanised steel shelving units are like to galvanised steel shelving units imported from China, and hence there can be no claim that Summit doesn't produce like goods to the goods description and is not an Australian industry that produces like goods for the purposes of the Act. This is confirmed by Romak at page 17 of their submission, which concedes 'the Goods description does include goods which might reasonably be considered to be 'like goods' to those manufactured by the Australian industry...'.⁵

Consequently, Summit considers that the claims made by Romak and Geelong that Summit doesn't produce 'like goods' to imported powder coated goods are only relevant to the investigation in so far as considering whether an exemption under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) is justified. Claims for exemption based on likeness are discussed separately below.

³ Romak submission, Page 17

⁴ Geelong submission, Page 8.

⁵ For the rest of this submission, Summit's references to 'steel shelving units' and the goods covered by the application/investigation (the goods) relate to the 'true' definition of the goods, being one that excludes industrial and slotted angle shelving based on the clarifications that Summit has provided to the application and the accepted industry meaning.



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Australian market size

At Page 11 of its submission, Geelong claims that, due to the exclusions of the goods covered by the application, there is 'almost no Australian market for like goods'. This is only due to Geelong's self-serving definition of the exclusions of the goods, which Geelong has used to rule out Summit as a manufacturer of like goods. Summit has refuted this self-serving interpretation and has clearly shown that Summit is a local manufacturer of like goods.

Geelong's submission goes on to make observations about market size and share, including the claims of Summit's application and the Commission's findings in its consideration report. Summit leaves it to the Commission to determine market size and share based on all available information and facts.

Load weights

Geelong's submission makes comments on load weights (at page 10) and observes that nut and bolt steel shelving units are not practically or commercially substitutable for shelves with a higher weight capacity.

It is not 100% clear to Summit what Geelong is claiming in this part of its submission, noting that Summit makes a range of steel shelving units with various load weights and capacities, so is able to produce a product for a consumer with higher weight loading requirements.

Locking systems

At Page 10 of its submission, Geelong notes that the 'locking system' of a steel shelving unit impacts on functionality and consumer decisions. Geelong notes that boltless shelving has strength and assembly benefits over nut and bolt, and nut and bolt is rarely marketed as an alternative to boltless.

Summit does not fully understand what claims (if any) are made by Geelong here, as the Summit makes boltless shelving as well as nut and bolt. If the Commission considers there is a claim to address here, Summit would appreciate further clarification of the nature of the claims.

Romak's submission⁶ observes that, in boltless shelving, the goods it imports use a keyhole slot in their locking system, while the Australian industry uses a 'slotted structure'. It is not clear what Romak intends to claim here either, but presumably it intends to make some claim that this difference makes the goods not like, or that there is some superiority attributed to keyhole structures.

Summit notes that both keyhole and slotted systems are completely fit for purpose and provide the same functionality of assembly in boltless shelving systems, so refutes any claims of superiority or likeness.

⁶ See page 7.



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Exemption claims – powder coated shelving units

The Geelong submission contends⁷ that powder coated steel framed shelves (PCSS) are eligible for an exemption under s.8(7)(a) and s.10(8)(a) of the Dumping Duty Act, as the goods produced by Summit are not like goods to, or do not directly compete with, PCSS.

In its submission, Romak submits⁸ that 'black powder coated shelving units' should be granted an exemption under the same provisions. The black powder coated goods claimed by Romak are a sub-set of the PCSS claimed by Geelong, so will be examined collectively with the goods discussed by Geelong in relation to its exemption claims.

Summit firmly objects to any such exemption, and notes that it produces both like and directly competitive goods to PCSS.

a) 'Like' goods

In previous exemption inquiries and assessments, the Commission has interpreted the term 'like' goods, for the purposes of these exemption provisions in the Dumping Duty Act, as having the same meaning as that afforded to 'like goods' under s.TG(1) of the Act. Specifically, this is that like goods are those that are identical or have characteristics closely resembling each other.

This definition is further guided by the Commission's like goods framework, as outlined in the Commission's *Dumping and Subsidy Manual*. This directs an assessment of 'likeness' be reference to four likeness indicators, being physical likeness, functional likeness, commercial likeness and production likeness.

A comparison of the likeness of Summit's steel shelving units and imported PCSS is detailed below:

1. **Physical likeness:** Summit's steel shelving units are like to imported PCSS regarding sizing, weight and weight loading, shape and appearance.

Both PCSS and Summit's steel shelves are supplied in a range of sizes, weight loadings, shelf numbers, dimensions, etc. Summit's range of steel shelves includes units of similar size, weight loading, etc to each model of PCSS imported to Australia. .

2. **Functional likeness:** Summit's shelving units have the same functionality and quality as imported PCSS and perform the same. They are both used as shelving units to store various objects in various settings. As above, the models of imported PCSS have various characteristics in terms of dimensions, weight loading, etc which may make certain models more suitable for certain storage uses than others. Again, Summit's range of steel shelving units includes models that are able to closely match all imported PCSS in terms of dimensions, weight loading, etc.

⁷ Page 9.

⁸ Page 25

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3. **Commercial likeness:** The shelving units are sold in the same market segment. Both the imported and the Australian industry goods are sold at home improvement stores, retailers, department stores, office supply stores and online retailers. The imported and the Australian industry goods compete on price. Retailers who purchase and on-sell steel shelving units commonly stock a range of PCSS and galvanised steel shelving units (which, if imported, are clearly identical or closely resembling Summit's goods), for sale through the same channels to similar target markets in direct competition. The packaging of PCSS and Summit's steel shelving units are very similar, being packaged in cardboard boxes printed with logos and advertising material.
4. **Production likeness:** The production methods of imported PCSS boltless shelving units can differ from Summit's in that Summit produce slot and tab construction and the exported shelving units use rivet/keyhole (Romak/Geelong) and slot and tab (Geelong) The PCSS shelving units use steel coil as a key raw material while Summit's main steel input is galvanised coil. All other processes of manufacture are the same or extremely similar to Summit's manufacturing process of steel shelving units. The PCSS boltless shelving unit's legs and beams are powder coated after the production process is completed

In light of the above, it is demonstrated that Summit's steel shelving units are 'like' to the PCSS that Romak and Geelong claim should be exempted from any final anti-dumping and/or countervailing duties that may result from the investigation.

b) Directly competitive goods

As the exemption provisions in the *Dumping Duty Act* provide that an exemption may only be granted when like **or** directly competitive goods aren't manufactured by Summit, the fact that likeness has been shown above makes this consideration irrelevant.

In any case, the discussion above regarding commercial likeness and Summit directly competing with PCSS demonstrates that Summit manufactures directly competitive goods to PCSS in any case.

I trust the above information is of use to the Commission and other interested parties to the investigation. Please do not hesitate to contact me should you require further information.

Kind regards

A handwritten signature in black ink, appearing to read 'Janice Riley', with a horizontal line above and a flourish below.

Janice Riley
Executive Director
