

10 April 2017

The Director
Operations 2
Anti-Dumping Commission

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Applicant's response to submission (EPR Folio No.384/006)
Case: Dumping Investigation No. 384 – Alloy Round Steel Bar exported from China

We refer to the submission of J. Bracic & Associates on behalf of Donhad Pty Ltd (**Donhad**)¹, and reply to each of the respondent's sub-titled sections as follows.

"The scope of goods subject of the application"

We are at a loss to understand the respondent representative's submission on this point. There is nothing in domestic law or practice that precludes the applicant from identifying 'goods under consideration' that cover multiple classes or models of goods, provided that there is a domestic industry producing 'like goods' to the goods howsoever described. Indeed, there are WTO dispute settlement decisions that directly contradict the respondent representative's contention.

For example, the Disputes Settlement Panel in *European Communities - Anti-Dumping Measure on Farmed Salmon from Norway (EC — Salmon (Norway))*² rejected Norway's claim that the 'product under consideration' must consist of a single, internally homogeneous product or, alternatively, categories that are each individually 'like' to each other so as to constitute a single homogenous product.³ Instead, the Panel concluded that:

*"[t]here is simply nothing in the text of Article 2.1 that provides any guidance whatsoever as to what the parameters of that product should be. The mere fact that a dumping determination is ultimately made with respect to 'a product' says nothing about the scope of the relevant product. There is certainly nothing in the text of Article 2.1 that can be understood to require the type of internal consistency posited by Norway."*⁴

To possibly reconcile the respondent representative's submission, we can only think that he is attempting to draw parallels to the practice permitted under Article 6.10 of the WTO *Anti-Dumping Agreement*, namely, 'multiple averaging'. However, even if this is the case, it does not permit the Anti-Dumping Commission (**Commission**) to narrow the 'goods under consideration' to just "grinding bar [as] a discrete and distinct good from other imported alloy steel bars".⁵

As such, the respondent's representative appears to be repeating the error that the Panel expressly decided against – namely, that the concept of 'the product' ('goods under consideration') did not have to be interpreted to require an investigating authority to have defined the product under

¹ EPR Folio No. 384/007

² Panel Report, *European Communities - Anti-Dumping Measure on Farmed Salmon from Norway*, WT/DS337/R, adopted 15 January 2008, and Corr.1, DSR 2008:I, 3 (*EC — Salmon (Norway)*)

³ *EC — Salmon (Norway)* at [7.47]

⁴ *EC — Salmon (Norway)* at [7.48]

⁵ To quote the respondent's submission

consideration to include only products that are ‘like’.⁶ This conclusion was supported by the subsequent decision of the Panel in *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (EC — Fasteners (China))*⁷:

*“The mere fact that a dumping determination is ultimately made with respect to ‘a product’ says nothing about the scope of that product. There is certainly nothing in the text of Article 2.1 that can be understood to require any consideration of ‘likeness’ in the scope of the exported product investigated...”*⁸

*“while Article 2.1 establishes that a dumping determination is to be made for a single ‘product under consideration’, there is no guidance for determining the parameters of that product, and certainly no requirement of internal homogeneity of that product, in that Article.”*⁹

“Australian industry producing like goods”

We are similarly at a loss to understand the respondent representatives’ arguments concerning the proper identity of (i) *the applicant*, and (ii) *the Australian industry producing like goods*.

For the avoidance of doubt, the applicant is OneSteel Manufacturing Pty Ltd (**OneSteel**). Further, in its application, the applicant, OneSteel, identified Commonwealth Steel Company Pty Ltd (trading as ‘Moly-Cop’) (**Moly-Cop**), as a producer in Australia of like goods, specifically ‘grinding rods’. Since the initiation of this investigation, a potential third producer of like goods has come to the applicant’s attention, specifically Milltech Pty Ltd. This has been addressed by the applicant in an earlier submission.¹⁰

Notwithstanding the above, it remains the applicant’s conclusion that it is the largest producer of like goods in Australia, and contrary to the respondent’s contention, the largest, and only producer of *grinding bar* in Australia.

The applicant has made full disclosure of its method and process of production in Australia of the like goods – including *grinding bar*, specifically. The applicant sees nothing in the respondent representative’s submission that detracts from the conclusion that it is the sole Australian producer of *grinding bar*. Therefore, it is completely **incorrect** for the respondent to conclude that “OneSteel does not and has not produced *grinding bar* or rod in Australia”. Further, it is **incorrect** for the respondent to assert that “the only local producer of *grinding bar* is Com Steel [Moly-Cop]”.

To put this matter beyond doubt, Moly-Cop is not a producer of *grinding bar* in Australia. Moly-Cop, is and (to the applicant’s knowledge) remains a producer of mining consumable products, specifically *grinding balls* and *grinding rods*. The former are not like goods, whereas the latter are. Moly-Cop is a fully integrated producer of finished mining consumable products - the majority being grinding balls and a relatively small volume being grinding rods as referenced in OneSteel’s application. Anything upstream to these finished products are treated as WIP (work-in-progress) by Moly-Cop. The company does not trade or deal in the Australian domestic market for the sale of *grinding bar*. This should be patently obvious to the respondent, given that it is the sole customer in Australia of *grinding bar*. On the other hand, Moly-Cop does produce (as finished goods) *grinding rods*, which it does in turn sell into the Australian domestic market. To the degree that Moly-Cop

⁶ *EC — Salmon (Norway)* at [7.68]

⁷ *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/R, adopted 3 December 2010 (**Panel Report, EC – Fasteners (China)**)

⁸ *Panel Report, EC – Fasteners (China)* at [7.263]

⁹ *Panel Report, EC – Fasteners (China)* at [7.265]

¹⁰ *EPR Folio No. 384/011*

produces *grinding rods*, the applicant considers that company to be an Australian producer of like goods.

“Other factor – [redaction]”

In order to provide a meaningful response to the allegations contained under this sub-titled section of the respondent’s submission, the applicant requests confidential disclosure of “*Confidential Appendix 2*”.

“Changed circumstances post-investigation period”

The applicant refers to and repeats its above reply to the respondent’s incorrect allegation under the section, sub-titled “*Australian industry producing like goods*”. Therefore, it only remains for the applicant to again refute the respondent’s suggestion that the applicant cannot “continue” to produce the like goods in Australia. Notwithstanding this, the applicant is intrigued by the redacted text proffered by the respondent as an “example” of evidence of its allegation, and as such seeks confidential disclosure to it.

Conclusion

The respondent representative has based his submission on two fundamentally flawed assumptions:

1. that the goods description must include only products that are identical to those produced by the Australian industry; and
2. that the applicant does not produce in Australia the model of like goods, known as *grinding bar*.

The applicant confirms its full disclosure to the Commission of its production method for the like goods, and specifically *grinding bar*.

In order to respond to certain allegations, the applicant requests confidential disclosure to it of the redacted materials identified above.

FOR AND ON BEHALF OF THE APPLICANT

ONESTEEL MANUFACTURING PTY LTD