PUBLIC VERSION

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

Dumping investigation into alloy round steel bars exported from the Peoples Republic of China

Dear Director

This submission is made on behalf of Donhad Pty Ltd (Donhad) in response to the Anti-Dumping Commission's (the Commission) findings outlined in Statement of Essential Facts Report No. 384 (SEF 384) on 27 October 2017.

Donhad fully supports the Commission's findings in SEF 384 and the proposed decision to terminate the investigation. Donhad welcomes the careful and thorough examination and assessment into the composition of the Australian industry. As highlighted by Donhad at the outset of the investigation, identification of local production of like goods and its impact on the structure of the Australian industry was critical to undertaking a rigorous material injury analysis.

Donhad also supports the Commission's decision to give weight to its statements and submitted evidence demonstrating that issues other than dumping were instrumental in the applicant's lost sales. These issues include:

- quality, testing and performance factors;
- the applicant's inflexible value proposition; and
- the applicant's inability to comply with requirements for new development grades of grinding bar.

It is absurd for OneSteel to assert that these issues have '*remained hidden from the applicant*'. The documentary evidence submitted to the Commission included email correspondence between Donhad and OneSteel which confirmed that the quality and testing issues, its inability to supply new development grades and its value proposition were all known and accepted by OneSteel. In addition, the discussions and negotiations held with OneSteel have involved [redacted], who Donhad understands is directly involved in actioning the current dumping application.

It is therefore disingenuous for OneSteel to continue to claim that it was unaware or uninformed of the factors raised by Donhad when the evidence clearly highlights that discussions surrounding these issues have been on-going between Donhad and OneSteel for a number of years.

On the basis of the findings set out in SEF 384, Donhad contends that there are sufficient grounds for the Commissioner of the Anti-Dumping Commission to be satisfied that injury caused by dumping is negligible, and promptly terminate the investigation in accordance with subsection 269TDA(13) of the *Customs Act 1901* (the Act).

Notwithstanding its support for the Commission's proposed decision to terminate the investigation, Donhad provides the following comments on specific findings and reasoning contained in SEF 384.

Standing / Industry support

It is noted that after considering the issue of standing, the Commission continues to remain satisfied '*that the relevant threshold test has been met and has not revisited the standing decision.*'[1] With respect, it would appear that the Commission has overlooked the second of the mandatory requirements for determining whether standing existed and as such, whether the investigation was permitted.

Subsection 269TB(6) of the Act reflects Article 5.4 of the Anti-Dumping Agreement (ADA), and outlines the requirements for determining whether an application is supported by a sufficient part of the Australian industry. Article 5,4 of the ADA states:

> *5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed[(13)] by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.[(14)] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.*

In SEF 384, the Commission appears to rely on the fact that '*Moly-Cop has not expressed a view on whether it supports or opposes the investigation*'[2] in maintaining its view that the standing requirements were met. It is accepted that Moly-Cop's lack of comment on the application may have enabled the applicant to meet the 50% threshold of the domestic industry expressing support for or opposition to the application.

However, the question of Moly-Cop's support for or opposition to the application is irrelevant when determining whether the applicant's production of like goods accounted for at least 25% of the <u>total</u> domestic production of like goods. That is, where the applicant(s) production is less than 25% of the total domestic production of like goods, sufficient support of the domestic industry is

[1] SEF 384, page 22.

[2] Ibid.

not reached and the administering authority is required to reject the application and not proceed to initiation.

It is apparent to Donhad from the chart at figure 1 of SEF 384, that the sole applicant in this case did not account for at least 25% of total production of like goods.

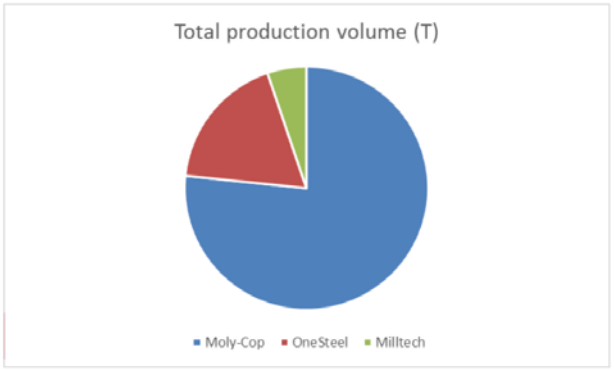

Figure 1: Total production of alloy round bar from 1 October 2015 to 30 September 2016

This supports the view that the sole applicant did not comply with the minimum production threshold required by subsection 269TB(6) of the Act. This confirms that the Commission's decision to initiate is invalid and that immediate termination of the investigation is required.

Injury analysis

Donhad notes that the Commission's injury analysis[3] is confined '*… to OneSteel and Milltech. Where necessary, and for the purposes of this chapter, the Commission has consolidated the data from both entities.*' This approach appears to stem from the lack of requested 'information and evidence' being submitted by Moly-Cop to the investigation. Again, Donhad respectfully disagrees with the Commission's reasoning and findings as the preliminary injury analysis does not comply with the requirements of, or the Commission's interpretation of the Act.

As outlined in SEF 384, the injury assessment examines whether the **Australian industry** has experienced material injury caused by dumping. The Australian industry is defined as that person or persons who **produce** like goods in Australia. Therefore, it is without doubt that the Commission's injury determination must be connected and associated to the **Australian industry producing like goods**.

This is supported by the finding of the Federal Court[4] and reflected in the Commission's Policy guidelines[5], which concludes:

> *…that the Australian industry is the sum total of the industry in Australia (not any part, whether that part be defined by geography, market or any other criteria) and the material injury determination must be assessed against the Australian industry as a whole.*

[3] Ibid, page 37.

[4] Swan Portland Cement Limited and Cockburn Cement Limited v the Minister of Science, Customs and Small Business and the Anti-Dumping Authority [1989] in judgement NG26 (Wilcox, J) and Swan Portland Cement Limited and Cockburn Cement Limited v the Minister of Small Business and Customs and the Anti-Dumping Authority [1991] in judgement G377 (Lockhart, J).

[5] ADC Dumping & Subsidy Manual, April 2017, page 16.

This is further supported by the WTO Dispute Panel in *Mexico — Corn Syrup*[6], which concluded in referring to Article 4.1 and footnote 9 to Article 3:

> *These two provisions inescapably require the conclusion that the domestic industry with respect to which injury is considered and determined must be the domestic industry defined in accordance with Article 4.1.*

Given that the Commission has defined the Australian industry as comprising Moly-Cop, OneSteel and Milltech, and Moly-Cop's production accounts for over 75% of total Australian production, it is inconceivable that the Commission could proceed to undertake its injury analysis without cost and sales data from the predominant local Australian producer.

It is noted that Article 4.1 of the ADA allows for the domestic industry to be confined to domestic producers '*whose collective output of the products constitutes a major proportion of the total domestic production of those products.*' The Appellate Body in *EC — Fasteners (China)*[7] interpreted 'major proportion' as:

> *…producers whose collective output represents a relatively high proportion that substantially reflects the total domestic production. This ensures that the injury determination is based on wide-ranging information regarding domestic producers and is not distorted or skewed.*

As highlighted earlier in this submission, it is clear from the chart at figure 1, that the combined production of OneSteel and Milltech accounts for less than 25% of total Australian production. In this circumstance, it is irreconcilable to conclude that the production by OneSteel and Milltech, which accounts for less than 25% of total local production, and which relates entirely to products not competing with the predominant import volumes of grinding bar, could be considered representative and a major proportion of the Australian industry.

Therefore, Donhad contends that in the absence of relevant and comprehensive cost and sales data by Moly-Cop, the Commissioner is unable to be undertake a meaningful and accurate injury analysis to allow for conclusions on material injury be made. On that basis, the Commissioner is obliged to be satisfied that dumping caused negligible injury, and terminate promptly pursuant to subsection 269TDA(13) of the Act.

Yours sincerely

John Bracic

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[6] Panel report, *Mexico — Corn Syrup*, WT/DS132/R, para. 7.147, page 216

[7] Appellate Body Report, *EC — Fasteners (China)*, WT/DS397/AB/R, para. 419, page 164.