

24 May 2019 Anti-Dumping Review Panel Secretariat
GPO Box 2013
Canberra City ACT 2601

Email: ADRP@industry.gov.au

Dear Sir/Madam

Re: Alloy Round Bar exported from the People's Republic of China Investigation No. 384a

I. Introduction

I refer to the notice dated 26 April 2019 published by the Anti-Dumping Review Panel ("ADRP") notifying of an application from OneSteel Manufacturing Pty Ltd ("OSM") dated 17 April 2019 for a review of a decision by the Minister for Industry, Science and Technology to publish a notice under section 269L of the *Customs Act 1901* in respect of alloy round bar "the goods" exported to Australia from the People's Republic of China ("China") (the "Reviewable Decision").

The Reviewable Decision was published on the Anti-Dumping Commission ("ADC") website on 19 March 2019 with details of the decision summarized in ADN 2019/17.

The ADRP has accepted the following grounds for the Reviewable Decision:

1. *ADC Report 384a was not authorized by the Act in that:*
 - a. *There was no obligation to provide a report to the Minister as the Commissioner was obliged to terminate the investigation under s.269TDA(13); and*
 - b. *The recommendation made by the Commissioner was in relation to all the goods the subject of the application and goods of a like kind when s.269TL only provides for a recommendation concerning the goods of a particular kind or goods of a like kind to particular goods.*
2. *The Reviewable Decision was not authorized by s. 269TL, the Minister's power to make declaration in pursuance of that section being limited to specifying particular goods that fall within the class of goods described in Part XVB of the Act and in Report 384a as the goods the subject of the application. Section 269TL does not authorize a declaration that purports to apply to all the goods the subject of the application;*
3. *The evidence presented in Report 384a to support the finding that the threat of injury was negligible consisted of statements of intent that were not determinative of what would happen in the future. In relying on such evidence, the Reviewable Decision was not based on findings of fact and instead relied on allegations, conjecture or remote possibilities; and*
4. *The Minister did not consider or analyse the threat of injury to OneSteel and Milltech Pty Ltd in market sectors other than grinding bar and the preferable decision was to limit the specification of the goods under s 269TL to round bar and publish a notice under s.269TG(2) applying s 8 of the Customs Tariff (Anti-Dumping) Act 1975 to other alloy bar.*



Moly-Cop Pty Ltd ("Moly-Cop") is an Australian manufacturer of grinding bar. Moly-Cop manufactures goods that fall within the description of the goods the subject of Investigation No. 384a. Moly-Cop provides the ADRP with its views in respect of each of the grounds of appeal referred to by OSM.

II. Comments on Review Grounds

1. *Report 384a not authorised by the Act*

It is asserted by OSM that the Commissioner was not required to forward the Recommendations and Final Report No. 384a to the Minister when the correct or preferable decision was for the Commissioner to terminate the investigation under s.269TDA(13).

It is contended by OSM that by virtue of the Commissioner providing Recommendations and Report No. 384a to the Minister it was "*denied its right to make an application to review to the Panel under s.269ZZN*". Moly-Cop does not disagree with OSM that the correct or preferable decision was for the Commissioner to terminate Investigation No. 384a. However, it would appear by virtue of this ADRP Review that OSM has not been denied its right to make an application for review to the ADRP.

It would appear that the Commissioner has included a recommendation under subsection 269TL(1) due to its examination of injury suffered in separate segments (including the smaller non-grinding bar segments) supplied by the Australian industry. The Commission identified the injury experienced in "other segments" of the round alloy bar market (i.e. excluding grinding bar) was in a "very small segment of the market" and this could not be considered to be material to the whole of the Australian industry. The termination of the investigation by the Commissioner would therefore have been the correct or preferable decision.

2. *The Reviewable Decision was not authorized by s.269TL*

OSM states that the Minister's decision not to apply measures following acceptance of the recommendations in Report No. 384a was "not authorized".

Moly-Cop has indicated that it does not disagree with OSM's claims that the correct or preferable decision was for the Commissioner to terminate the investigation under subsection 269TDA(13). Moly-Cop does recognize that s.269TL applies to "particular goods" that are a subset within the goods description and that, whilst having determined the injury suffered by the Australian industry that produces like goods to the "particular goods" the injury experienced in that segment of the Australian market was not "material" in nature when considered in the context of the goods the subject of the application.

Further, the Commission determined that the Australian industry (of that smaller segment of the goods) was not threatened with material injury.

Moly-Cop does acknowledge why the Commissioner has references s. 269TL in its recommendations, due to the finding of material injury experienced by Australian producers (OSM and Milltech) in a small segment of the Australian market.

3. *Future threat of injury*

The Australian market for the goods the subject of the application changes substantially in the periods following the commencement of Investigation No. 384 and the finalization of Investigation No. 384a.

The period of investigation was the twelve months from 1 October 2015 to 30 September 2016. Investigation No. 384 commenced on 10 January 2017, following an application by OSM dated 15 November 2016. Investigation No. 384 was finalized on 25 January 2018 and OSM appealed the



Commissioner's termination decision soon thereafter. On 27 April 2018 the ADRP revoked the Commissioner's termination decision and the Commissioner published ADN No. 2018/73 to resume investigation No. 384. Statement of Essential Facts No. 384a was published on 13 November 2018, and the final report and recommendations was due by 6 February 2019. The Minister's decision was published on 18 March 2019.

At the time of OSM's application for anti-dumping measures, it was the largest supplier of grinding bar into the grinding bar segment of the Australian market – a major segment of the alloy round bar (the goods) market. On 3 January 2017 Moly-Cop was sold by Arrium administrators to American Industrial Partners (AIP). In August 2017, AIP and Valmont Industries, Inc agreed to the sale of the grinding ball manufacturer Donhad Pty Ltd to Moly-Cop. All grinding bar requirements were then domiciled within Moly-Cop.

During the periods of investigation, the structure of the industry was materially altered with Moly-Cop's purchase of the grinding bar customer, Donhad. Donhad would source its future grinding bar requirements from Moly-Cop, substantially reducing any future supply requirements from OSM.

Whilst OSM was a major supplier of grinding bar to the grinding ball producers during the investigation period, the structural industry changes that followed meant that all future grinding supply into the grinding ball industry would be supplied by Moly-Cop, with limited volumes sourced either from imports or from OSM as required.

Following the sale of Moly-Cop to AIP and the purchase of Donhad by Moly-Cop, OSM's supply to the grinding bar market in Australia was negligible.

Hence the Commissioner is correct in concluding that any future injury to the Australian market for the goods the subject of the application was not material.

It should also be noted that OSM did not address the issue in the resumed investigation as to whether it possessed the capability to roll grinding bar without recourse to the arrangement it previously had with Moly-Cop. This would suggest that OSM will not be supplying grinding bar for rolling for use in grinding ball production. It cannot be concluded that the information relied upon by the Commissioner consisted of "allegations, conjecture or remote possibilities". This was not the case.

4. Injury to sectors other than grinding bar

It is claimed by OSM that "REP 384a does not consider, let alone analyse, the threat of injury to OneSteel and Milltech in sectors other than grinding bar." This claim is incorrect. Section 9.7 of Report No. 384a "Commission's consideration – other segments" on the future threat of material injury to the non-grinding bar segments of the market.

The Commissioner's analysis confirmed its position that "grinding bar, engineering bar, spring steel and strata bar" were each segments of the broader market covered by the goods description. The Commissioner correctly concluded that for injury analysis it is required to examine the actual injury caused and that threatened, to the broader market covered by the goods description.

The Commissioner noted that the grinding bar segment of the market constituted the majority of sales in the alloy round bar market (including for imports). The Commissioner's analysis confirmed that the material injury findings that was observable in relation to OneSteel was in relation to the grinding bar segment of the market. The Commissioner then concluded¹:

¹ Report No. 384a, P. 87.



"Even if the Commission were to assume that the basis for its material injury findings to Milltech during the investigation period continues to exist during the post investigation period, injury to a very small segment of the market is not considered to be material to the Australian industry as a whole in this case."

The Commissioner has considered the future threat of material injury to the smaller, non-grinding bar segment of the Australian market covered by the goods description and concluded *"..that there is no persuasive evidence before it which suggests that it is necessary to impose anti-dumping measures on alloy round bar in order to prevent a foreseeable and imminent injury to the Australian industry producing like goods."*

OSM's assertion that Report No. 384a "...does not consider, let alone analyse, the threat of injury to OneSteel and Milltech" is therefore incorrect. The Commissioner did consider the future threat of injury and was not satisfied that the imposition of measures would be effective. The Commissioner's findings in relation to the future threat of injury to the Australian industry is therefore the correct or preferable decision.

III. Conclusion

Moly-Cop acknowledges that the Commissioner could have terminated Investigation 384a under subsection 269TDA(13) on the basis of being satisfied that no material injury to the (whole) Australian industry could be proven. However, Moly-Cop considers that the Minister's decision is the correct or preferable decision concerning not being satisfied that the Australian industry has suffered or, is threatened, with material injury from the dumped exports from China.

Moly-Cop therefore requests the ADRP to affirm the Minister's decision.

If you have any questions, please do not hesitate to contact me on (02) 4974 0414 or Moly-Cop's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely

Keith Ritchie
Manager
Moly-Cop Australasia