24 May 2019

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

By email: adrp@industry.gov.au

Dear Secretary,

ADRP Review No. 99 – Alloy Round Bar exported from the People's Republic of China
Application by: OneSteel Manufacturing Pty Ltd

SUBMISSION OF THE APPLICANT

In support of its application for review of the decision of the Minister to publish a notice under subsection 269TL(1) of the *Customs Act 1901*[1] in this matter, OneSteel Manufacturing Pty Ltd (**the Applicant**), makes the following submission and observations specifically on the soundness of the Commission's consideration of the conditions of s.269TG(2).

The correct test under s.269TG(2) and the Commission's reliance on allegations, conjecture or remote possibilities

By s.269TG(2)(a) and (b), the enactment establishes the test to be applied when considering whether to impose measures on goods exported outside (following) the investigation period, namely, *goods of any kind*. As to such goods, where:

- *the amount of the export price of like goods*[2] *that have already been exported to Australia…* and *like goods that may be exported to Australia in the future…* are dumped; and

- *because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened…* [emphasis added],

then the Minister may, by public notice… declare that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice… .

In REP 384a, the Commissioner concluded that he was *"not satisfied that material injury is currently being caused, or is threatened in the future, to the Australian industry producing like goods by the dumped goods"*[3]. This was in spite of finding in the previous section [8] that "*the injury that has been*

[1] All legislative references in the application are to the *Customs Act 1901*, unless otherwise stated.
[2] c.f. "to any goods that have been exported to Australia" under s.269TG(1).
[3] REP 384a at [9.1].

caused by dumped goods… during the investigation period is greater than that is likely to have occurred in the normal ebb and flow of business uninfluenced by dumping, and is material" [4]

In reaching his conclusion, the Commissioner indicated that he applied the following tests and considered the following evidence to determine whether the … *prospective nature of measures* had been satisfied:

> "where the Commission finds that injury due to dumped goods has been caused to Australian industry producing like goods during the investigation period, it is the Commission's practice to consider whether injury from dumping is being caused and will continue into the future"[5]

With respect, the question to be answered by the Commission in its recommendation to the Minister is not whether … *injury from dumping will continue into the future…* but rather whether the *like goods*[6] *that have already been exported to Australia…* and the *like goods that may be exported to Australia in the future…* that are dumped, have caused injury to the Australian industry, or injury is being caused or is threatened to be caused. A proper reading of s.269TG(2) has consequence for the timeframe within which the Minister must consider the question of injury to the Australian industry and causation. The enactment is not concerned with the question of indefinite injury caused in the future, but rather, injury caused or threatened to be caused in the 'here and now', that is… *material injury to an Australian industry producing like goods has been or is being caused or is threatened… .*

Yet the Commission seeks to determine whether… *injury from dumping is being caused and will continue into the future*, and as a result of this misinterpretation of the domestic law seeks to make and resolve inquiries that are beyond its remit or indeed its administrative capacity and as such enter the realm of conjecture. So it is that the Commission having concluded, firstly, that *the injury that has been caused by dumped goods to Australian industry as a whole during the investigation period is greater than that is likely to have occurred in the normal ebb and flow of business uninfluenced by dumping, and is material*[7], and secondly, *that the exports of alloy round bar at dumped prices from the exporters found to be dumping in this investigation is likely to continue*[8], then proceeds to define the inquiry necessary under s.269TG(2) as whether it *can make credible assumptions about present or future injury caused by dumping based on those facts*[9].

In pursuit of this inquiry the Commission made a number of assumptions in the case of the 'grinding bar market' that no longer considers the question of whether material injury… *has been or is being caused or is threatened*… but rather whether "future injury will likely be caused by dumped goods in the grinding bar segment of the market"[10]. Not only is this test not supported by s.269TG(2), but in reaching the conclusion that *"the facts available provide insufficient evidence on which to conclude that future injury will likely be caused by dumped goods in the grinding bar segment of the market"*[11],

[4] REP384a at p.78 [8.8].
[5] REP384a at [9.2].
[6] c.f. "to any goods that have been exported to Australia" under s.269TG(1).
[7] REP 384a, p. 78.
[8] REP 384a, p. 79
[9] REP 384a, p.79.
[10] REP 384a, p. 86.
[11] REP 384a, p. 86.

the Commission had regard both to incorrect information and disregarded relevant information, specifically evidence led by the applicant in the course of the investigation of injury that *has been or is being caused or is threatened*.

In REP 384a, the Commission concluded that even if:

> …Moly-Cop continued to roll grinding bar for OneSteel that Donhad could then purchase from OneSteel… that arrangement (a prerequisite if OneSteel is to supply Donhad) is no longer a commercially stable arrangement between related entities, and is subject to the broader corporate goals of Moly-Cop and Donhad operating as related parties. OneSteel's ability to supply the grinding bar segment of the market is therefore considerably less certain than it was during the investigation period.[12]

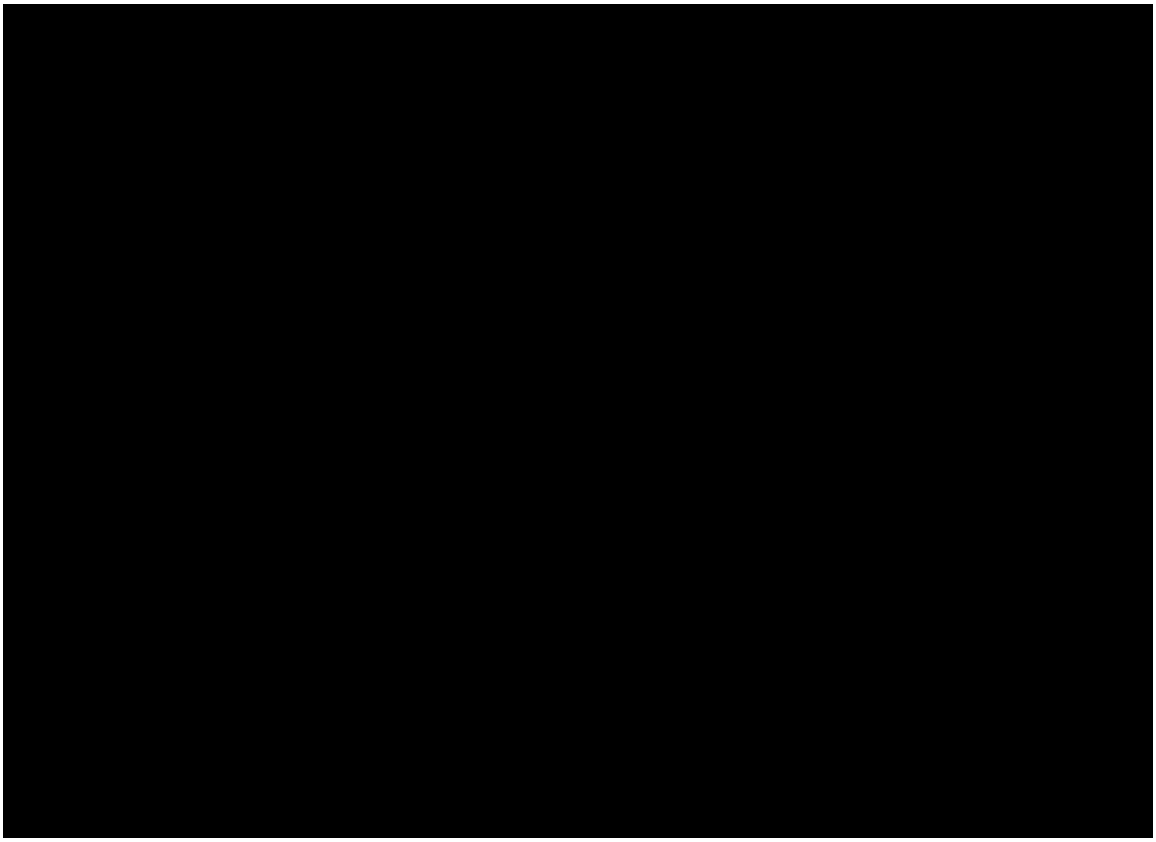
However, the applicant submitted evidence to the Commission in the course of the resumed investigation that at all relevant times following the conclusion of the investigation period that the arrangement between Moly-Cop and the applicant continued with no sign of cessation. Specifically, on 13 September 2018, in response to the Commission's *Request for Information* dated 4 September 2018, the applicant provided full particulars of the tolling arrangement together with invoices for (at that time) the most recent rolling services rendered by Moly-Cop to the applicant (as at August 2018)[13]. A full copy of the confidential version of that response is attached to this submission as CONFIDENTIAL ATTACHMENT 1.

In direct contradiction of the Commission's conclusions later reached in REP 384a, the applicant's evidence submitted on 13 September 2018 demonstrated the following conditions in the grinding bar market segment following the investigation period and supported the applicant's contention of injury to it that *has been or is being caused*:

1. Following the conclusion of the investigation period, the volume of alloy round bar toll-rolled by Moly-Cop for the applicant increased significantly, before decreasing to its lowest level in the month that Moly-Cop completed its acquisition of Donhad, before increasing again month-on-month (refer CONFIDENTIAL FIGURE 1, below):

[12] REP 384a, p. 85.

[13] EPR Folio No. 384/072.



CONFIDENTIAL FIGURE 1: Monthly toll rolling volumes (*Source: EPR Folio No. 384/072, CONFIDENTIAL ATTACHMENT 3*)

2. Sales of grinding bar continued to be made to Donhad (albeit in smaller volumes) in the period following the conclusion of the investigation period (since 30 September 2016).

Furthermore, in a submission dated 3 October 2018[14], the applicant alerted the Commission to the existence of ongoing imports of dumped like goods by Donhad following the conclusion of the investigation period, and the obligation of the Commission to consider the injurious effects of those goods that have already been exported to Australia, and the consequent material injury that had been or was being caused by those goods and the like goods that may be exported to Australia in the future:

> … the submission of Commonwealth Steel Company Pty Ltd, trading as 'Moly-Cop' (Moly-Cop) dated the 13th September 2018 in which the recently merged Moly-Cop / Donhad entity confirms that they have continued to import alloy round bar more than 2 years after the original investigation period.
>
> Moly-Cop's letter claims that their ongoing importation of alloy round bar is necessary for them to undertake trials to assess whether the grinding bar manufactured at Moly-Cop's Waratah mill will not cause production problems in Donhad's processing plants (located at Bassendean, WA, Newcastle, NSW, and Townsville, QLD). Although OneSteel acknowledges that a limited trial period is a reasonable course of action, there is no evidence before the Commission that even if all the trials are successful that all of the Donhad processing plants will transition from imported sources to their own production.
>
> Presupposing the former Donhad's East coast facilities (i.e. Newcastle and Townsville) were to fully transition to the alloy round bar sections produced by Moly-Cop's Waratah mill, it is entirely foreseeable that Donhad's West coast facility (i.e. Bassendean) will continue to source dumped Chinese alloy round bar. Indeed this is the logical

[14] EPR Folio No. 384/074.

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> explanation for Moly-Cop's late opposition to the OneSteel's application for the publication of a dumping duty notice the subject of this investigation. If it is Moly-Cop's genuine intention, as claimed in their submission dated the 1st June, to produce all the alloy round bar at their own facilities, it is difficult to reconcile why after being silent during the original investigation, they now oppose the imposition of dumping duties on Chinese alloy round bar that they claim they will no longer be sourcing from.[15] [emphasis added]

However, in spite of this submission, the Commission failed to consider the injurious effects of these like goods known to be exported following the conclusion of the investigation period. Instead, the Commission sought to attempt to predict the future composition of the Australian market for grinding bar as one in which there was no role for the applicant to perform in spite of all the evidence that it continued to be both a producer and vendor of grinding bar. The applicant specifically addressed these concerns in its submission dated 25 June 2018[16] following the resumption of the investigation:

> ***Current toll-rolling arrangements between Moly-Cop and OneSteel***
>
> As matters currently stand, since the agreement in August 2017 concerning the sale of Donhad, Moly-Cop has continued to toll-roll [redacted] tonnes of alloy round bar for OneSteel. Over that period, OneSteel has rolled [redacted] tonnes of alloy round bar within its own facilities.[17]
>
> ***Ongoing sales volume injury to OneSteel***
>
> Overall, OneSteel has quoted to supply to Donhad the total of [redacted] tonnes of grinding bar of which only [redacted] tonnes (or [redacted] per cent) resulted in sales for OneSteel. It is observed that acceptance of this offer corresponds with a period of increasing export prices from China (CONFIDENTIAL ATTACHMENT E, specifically refer export dates [redacted], for delivery the following month), which suggests that Donhad is prepared to continue to purchase grinding bar from OneSteel during periods of rising prices for the goods exported from China, or when there may be delays in shipments from China, i.e. a dual sourcing strategy.
>
> There are clear price negotiation motivations for Moly-Cop (and by extension, Donhad) to defeat the resumed investigation by suggesting that the toll-rolling arrangement and ongoing supply by OneSteel to Donhad has come to an end, when the evidence suggests otherwise, and the imminence of that outcome cannot be guaranteed. The latest export trade data suggest that the volume of goods exported by those exporters verified by the Commission to be dumping (Suzhou Suxin Special Steel Co. Ltd and Daye Special Steel Co. Ltd) have continued since the conclusion of the investigation period.[18]
>
> Furthermore, the Commission should not accept Moly-Cop's premise that the combined Moly-Cop/Donhad entity will no longer import dumped Chinese grinding bar to supplement or potentially replace its owns domestic production of grinding bar. Indeed, the company has used highly qualified language on this point:
>
> > Donhad's grinding media bar requirements will mostly be manufactured at the Moly-Cop, Waratah facility.[19] [emphasis added]
>
> As such, Moly-Cop reveals its real incentive for resisting the measures, namely, the continuance of Donhad's dual sourcing strategy albeit at dumped prices.

Yet the Commission ignored the applicant's positive evidence of material injury that had been caused and was being caused to it by the dumped like goods exported to Australia following the investigation

[15] CONFIDENTIAL ATTACHMENT 2
[16] EPR Folio No. 384/067.
[17] CONFIDENTIAL ATTACHMENT A.
[18] CONFIDENTIAL ATTACHMENT B.
[19] EPR Folio No. 384/065, p. 3.

period. In ignoring the applicant's evidence, the Commission overlooked the following key facts that contradict its conclusion, namely that following the investigation period:

- the commercial rolling arrangement continued between Moly-Cop and the applicant;
- the applicant continued to roll like goods at its own facilities;
- negotiations and sales of grinding bar to Donhad by the applicant continued; and
- Donhad continued to import dumped like goods.

All these facts were in turn ignored by the Commission when assessing the alternate question of whether because of the dumped exports that have already been exported to Australia or may be exported to Australia in the future, is material injury threatened? Instead the Commission assessed the volume of imports of like goods and indicated an absence of evidence to support a conclusion of excess capacity among exporters. However, the most troubling observation made by the Commission in its single paragraph assessment of threat of injury related to the its comments concerning the effect of dumped prices on domestic Australian market prices:

> Further, there is no evidence before the Commission that the imports are entering at prices which have a significant effect on domestic prices that would likely increase demand for further imports…[20]

The Commission offers no support for this finding. Furthermore, the known effect on domestic prices of the imported dumped goods is available from the Commission's analysis during the investigation period. On this question, the Commission specifically found earlier in REP 384a at [8.5.3]:

> To assess the price injury experienced by OneSteel, the Commission has instead taken the period in which the model prices have been undercut the most and established a percentage difference between the model price and actual selling prices of 10.1 per cent. The Commission considers that, in the absence of dumping, OneSteel would have continued to seek the prices which were generated by the model. Accordingly, the Commission then increased OneSteel's selling prices of grinding bar by this percentage for the investigation period to estimate the injury value of these lower sales prices.[21]

The Commission then concluded that… *the resulting price injury is not insignificant or negligible*[22]. Therefore, the applicant is unable to reconcile the Commission's later assessment that the effect of the dumped imports that may be exported in the future cannot be 'significant', when the only available evidence of their effect reaches a wholly different conclusion in the earlier parts of the Commission's recommendation to the Minister.

Conclusions

The correct or preferable decision was for the Minister to publish a dumping duty notice under s.269TG(1) and (2) applying s.8 of the *Dumping Duty Act* to the goods and like goods. Having found that the conditions of s.269TG(1) were satisfied on the question of causation[23], then the Commission ought properly have found that the conditions of s.269TG(2) were also satisfied. Instead, the Commission misguided the Minister concerning the correct test under that enactment and rather than

[20] REP 384a, p. 88.
[21] REP 384a, p.67.
[22] REP 384a, p.67 at [8.5.5].
[23] See REP 384a, p. 77 at [8.8]

assess whether material injury had been or is being caused by like goods dumped following the investigation period, the Commission relied on incorrect allegations, unfounded conjecture and remote possibilities. On the alternate question of whether dumped like goods exported to Australia or may be exported following the investigation period threatens material injury to the applicant industry, the Commission ignored the significance of the price effects of the dumped imports on the domestic market, in spite of finding that during the investigation period, their effect is significant.

The Commission has not only incorrectly considered the conditions of s.269TG(2), but has also ignored evidence in preference for unsubstantiated opinions on the future conditions of the Australian industry and market for the like goods, in a manner which may only be based on mere allegations, conjecture or remote possibilities.

To discuss any aspect of this submission further, please do not hesitate to contact the applicant's representative on record.

FOR AND ON BEHALF OF

THE AUSTRALIAN INDUSTRY APPLICANT