

10 July 2017

**Non-Confidential Version**

Mr Matthew Williams  
Director - Investigations 3,  
Anti-Dumping Commission  
Level 35, 55 Collins St  
Melbourne, Vic, 3000

Dear Mr Williams,

**RE: Accelerated Exporter Review for Sino Sources Tech Co., Ltd and Tianjin Jianwei Tube Co., Ltd**

- Your reference AR424 refers

We refer to our Accelerated Exporter Review application that was lodged on the ----- on behalf of Sino Sources Tech Co., Ltd (Sino Sources) and lodgement of Part A of the Exporter Questionnaire -----.

Since lodgement of our application and Part A of the Questionnaire, we have recently received your email dated -----, referring to the Anti-Dumping Commission's (ADC's) interpretation of 'Exporter', as contained in Section 6.2 of the Dumping and Subsidy Manual, as at April 2017 (Appendix A refers).

**Conclusion**

After further research and enquiries with the affected parties in China, we wish to confirm that Sino Sources Tech conforms with the ADC's definition of Exporter and therefore our application needs to be Initiated as soon as possible, particularly given the future time frames involved. In addition, we have also provided ----- Part A information of the Exporter Questionnaire in relation -----.

**1. Background**

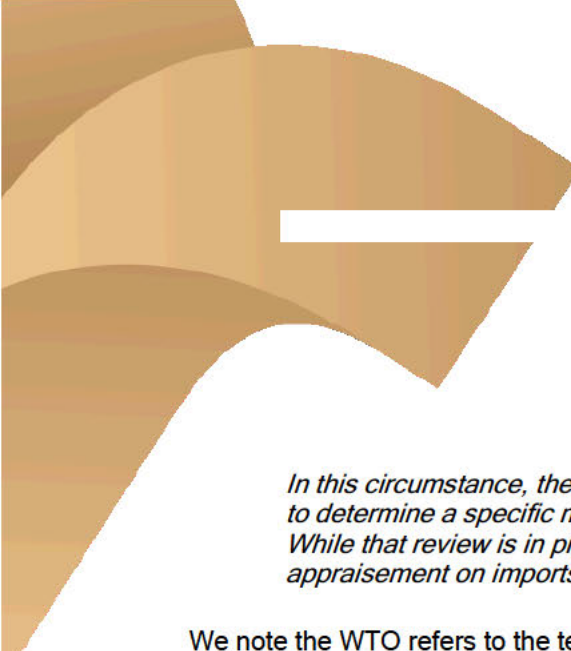
Whilst we appreciate there is a focus on the definition of Exporter, we also believe the WTO Agreement and Australia's legislation need to be examined, insofar as determining the basis on which an application for an Accelerated Exporter Review should be accepted.

In this regard, we refer to the following extract from the WTO Agreement: -

***"Article VI of GATT and the Anti-Dumping Agreement***

***New shippers***

*The Agreement makes provision for the assessment of Anti-Dumping duties on exports from producers or exporters who were not sources of imports considered during the period of investigation.*



*In this circumstance, the investigating authorities are required to conduct an expedited review to determine a specific margin of dumping attributable to the exports of such a “new shipper”. While that review is in progress, the authorities may request guarantees or withhold appraisement on imports, but may not actually collect Anti-Dumping duties on those imports.”*

We note the WTO refers to the term ‘New Shippers’ and therefore connotes a wider interpretation than simply producers and/or exporters. Also, the reference to ‘may request guarantees or withhold appraisement on imports’, -----.

This ----- Commission and -----, enabled -----the construction of the Solar Farm in ----- (i.e. the goods had ----- port of Townsville).

From a WTO Agreement perspective, we believe we satisfy the term ‘New Shipper’ in relation to Sino Sources.

In relation to Australia’s legislation governing Reviews of Anti-Dumping measures, including Accelerated Exporter Reviews, we note the following Sections of the Customs Act 1901: -

#### **“CUSTOMS ACT 1901 - SECT 269ZA**

##### **Applications and requests for review of Anti-Dumping measures**

(1) If:

- (a) Anti-Dumping measures have been taken in respect of goods; and
- (b) **an affected party** considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:
  - (i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed; or
  - (ii) the Anti-Dumping measures are no longer warranted;

**the affected party may**, by application lodged with the Commissioner, request that the Commissioner initiate such a review.”

## Section 269T of the Customs Act 1901 - Definitions for Anti-Dumping

**"affected party"**, in relation to an application under Division 5 for review of Anti-Dumping measures imposed on particular goods, means:

- (a) **a person who is directly concerned** with the exportation to Australia of the goods to which the measures relate or who has been directly concerned with the exportation to Australia of like goods; or
- (b) **a person who is directly concerned** with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods; or
- (c) a person representing, or representing a portion of, the Australian industry producing like goods; or
- (d) the Government of a country from which like goods have been exported to Australia."

**"new exporter"**, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice or like goods, means an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

Again, we believe Sino Sources qualify with the aforementioned criteria, being an affected party on the basis of *'a person who is directly concerned with the exportation to Australia of the goods to which the measures relate'* and the new exporter definition based on the 'non-export' evidence previously provided with our application (our emphasis).


### 2. Sino Sources - ----- Exporter

For your information, we have attached Purchase Contract Number ----- dated ----- 2017, from the buyer of the HSS, being ----- Co., Ltd, wherein there is no reference to the goods being exported to Australia, the customer involved or any references indicating the goods were destined for Australia.

We have also attached the ----- in relation to the ----- from the foregoing company to ----- (Sino Sources). Given ----- involved, the first ----- were despatched in the name of -----, thereafter Sino Sources name has been on all documentation, including the Customs Export declarations.

In addition, please find below supportive documentation supplied to confirm Sino Sources as the Exporter of HSS from China: -

- Export Invoice Numbers -----, issued by the exporter, Sino Sources (official company stamp affixed)
- Bill of Lading Number ----- depicting the Shipper or Exporter as Sino Sources Tech Co., Ltd.
- Full Container Packing Declaration issued by Sino Sources with the company's official stamp

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- Verified Gross Mass Statement for ----- Containers in the name of Sino Sources as the exporter/shipper, with the official company stamp
  - Full set of Export Documentation depicting ----- Exporter for the ----- shipments, followed by the ----- shipments in the name of Sino Sources with accompanying Customs Declarations confirming their exporter status (i.e. due to -----).
  - Translated Export Declaration No. ----- dated ----- 2017, confirming Sino Sources as the 'Consignor' and 'Business Unit' as the exporter.

We believe this evidence provides further confirmation that Sino Sources are regarded as the 'Exporter', as defined within Section 6.2 of the Dumping and Subsidy Manual (Appendix A refers).

### 3. Review Period

We refer to the ----- review period after lodgement of our application on the ----- 2017.

As Sino Sources' advisors in Beijing provided the original Part A information based on the twelve-month period ending ----- we needed to provide this information by the ----- 2017. However, we have since requested that we ----- with your subsequent request to ----- the twelve months ending ----- due to HSS exports ----- 2017.

As a result, please find attached the information pertaining to Part A for ----- relation to the ----- review period of ----- . We have also attached all supportive information and Non-Confidential and Confidential versions for your information.

### 4. Summary

Based on the abovementioned criteria and supportive information, we confirm that Sino Sources qualify as the 'Exporter' for the purposes of the original Accelerated Exporter Review application and we look forward to our application being 'Initiated' as soon as possible.

As you are aware, this project is vitally important from a 'National Interest' perspective, including the state of Queensland, we therefore seek your ongoing support and cooperation in relation to receiving a favourable outcome for the applicants and ----- Australia, given the importance of this renewable energy project for future energy supply and prices.

Your truly,

**Russell Wilkinson**

**CEO- Trusted Trader International**



## Appendix A - Dumping and Subsidy Manual - April 2017

### Section 6.2 - Exporter Definition

#### ***"6.2 POLICY***

*The Commission considers that goods are exported when they leave the country of export.*

*Generally, export price is assessed as the 'free on board (FOB) price' received by the exporter at the seaport in the country of export or, in the case of air transport, at the airport in the country of export. FOB is a generally known term and it is defined in Incoterms. In some circumstances export price may be assessed at another level. An ex-factory price received by the exporter may be used when calculating a dumping or subsidy margin, for example, in the situation where charges are all inclusive of local and international charges and it is impractical to segregate them.*

*Goods that are exported by sea from land-locked countries are transported across the country of export's border for a seaport destination. The point of export in this circumstance is generally taken to be the border of the country of export and any inland freight incurred from this point will not be included in the export price.*

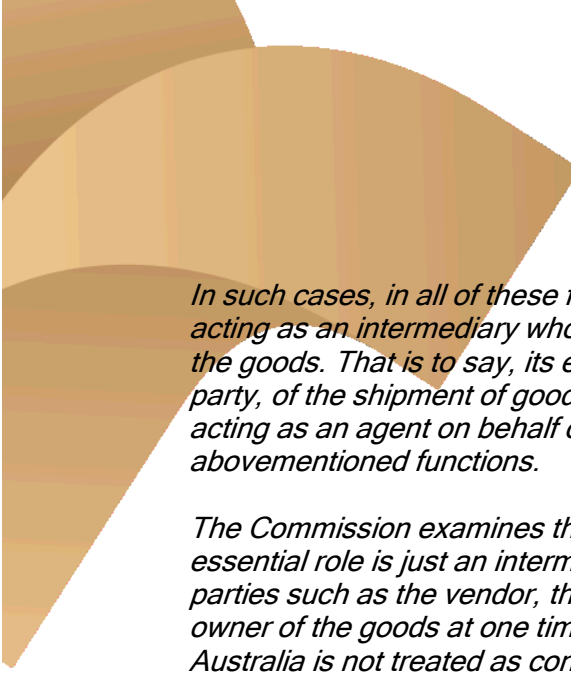
*The Commission will identify the exporter as:*

- *a principal in the transaction located in the country of export from where the goods were shipped and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or*
- *a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.*

*Where there is no principal in the country of export, the Commission will normally consider the exporter to be the person who gave up responsibility for the goods as described above.*

*Generally, the exporter will be found in the country where the goods started their journey to Australia but situations may arise where goods pass in transit through another country. In this case the Commission will normally consider the exporter to be located in the country of manufacture, being the person responsible for sending the goods to Australia.*

*It is common for traders or other intermediaries to play a role in the exportation of the goods. These parties will typically provide services such as arranging transportation (both land and ocean), arranging port services, arranging loading, conducting price negotiations, arranging contracts with producer and customer alike, conveying the customer's specifications to the producer including quality, marking, and packing requirements, etc.*



*In such cases, in all of these functions when the roles are analysed the trader is typically acting as an intermediary who is essentially acting as a facilitator in the sale and shipment of the goods. That is to say, its essential role is to be a facilitator, acting on behalf of another party, of the shipment of goods produced for export to Australia. For example, it may be acting as an agent on behalf of the customer/importer in Australia in some or all of the abovementioned functions.*

*The Commission examines the parties in the transactions and identifies those parties whose essential role is just an intermediary in the transactions. Also identified are the principal parties such as the vendor, the exporter, and the importer. The exporter must have been the owner of the goods at one time but, as noted, ownership at the time the goods left for Australia is not treated as conclusive when identifying the exporter. The exporter and vendor are often different entities. When the goods are produced they may pass through several parties on their way to Australia, some of whom may be vendors in a third country. A vendor may arrange the sale; set prices; cover warranty; prepare Customs and other paperwork; make shipping arrangements; pay the freight; but still not be the exporter for determining normal value under these guidelines.*

*Typically the manufacturer, as a principal, and who knowingly sent the goods for export to any destination, will be the exporter. The export price will be the price received by that producer/exporter i.e. the manufacturer. Where an intermediary is involved the export price, for the purposes of calculating a dumping or subsidy margin, will be the price received by that exporter when selling to the intermediary (even if the intermediary is in the same country as the exporter). In working out the dumping margin the export price received by the exporter for the goods will typically be the FOB price but an export price at another point may have to be used depending on the circumstances, for example, a free alongside price, or an export price expressed in some other terms.*

*Depending on the facts, the Commission considers that only in rare circumstances would an intermediary be found to be the exporter. Typically this will only occur where the intermediary has purchased the goods from the manufacturer; the manufacturer has no knowledge at all that the goods are destined for export to any country; and the essential role of the intermediary is that of a distributor rather than a trader and because it is acting more like a distributor the intermediary would usually have its own inventory for all export sales (our emphasis).*