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26<sup>th</sup> February 2013

Mr John Bracic  
Director, Operations 1  
International Trade Remedies Branch  
Australian Customs & Border Protection Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

**Re: ACDN Customs Notice No 2013/07: Certain Hollow Structural Sections - Reinvestigation of Certain Findings**

Please find attached for your consideration the Australian Steel Association (ASA) submission regarding the Re-investigation of Certain findings for certain Hollow Structural Sections exported from the People's Republic of China, the Republic of Korea, Malaysia & Taiwan.

I am available to discuss this submission at your convenience.

Yours Sincerely

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**1. The finding that there was a particular market situation in the Chinese iron and steel market such that sales in that market were not suitable for use in determining a normal value under s269TAC1.**

The Australian Steel Association (ASA) supports the Trade Measures Review Officer's ( TMRO) direction to re-investigate the Customs finding of a particular market situation in China under Section 269TAC(2) (a)(ii).

We note the TMRO's acknowledgement that Australia treats China as a market economy for anti-dumping purposes and that Customs and Border Protection conducts its investigation in the same manner for China as it does for other market economies of the World Trade Organisation (WTO)<sup>i</sup>

We also note the TMROs detailed consideration of Chinese Government policy and initiatives<sup>ii</sup> and the observation that " many of these objectives may be regarded as the proper business of government in a competitive market"<sup>iii</sup>. By way of comparison, we draw attention to Australian Government initiatives that similarly endeavour to foster an environment in which competing businesses can operate efficiently<sup>iv</sup>

In re-investigating whether a particular market situation exists for HSS in China, we request that the hierarchy of establishing the normal value of goods be considered, that is:

The primacy of establishing the normal values of goods based on sales in the ordinary course of trade per s269TAC(1) is the default basis of establishing normal value.

That prior to rejecting s269TAC(1) as the basis of establishing normal values, that the elements of s269TAC(2) be considered separately and together. i.e. whether:

**s269TAC (2)(a)(i)**

An " absence or low volume of sales of like goods in the market" prevent a normal value being established. Global crude steel production in 2012 was approximately 1548 million tonnes of which China produced 46%<sup>v</sup> or over 700 million tonnes. Within the hollow structural sections market there should be adequate transactions in the ordinary course of trade to establish a normal value.

**s269TAC(2)(a)(ii)**

"Because the situation in the market in the country of export is such that sales in the market are not suitable for use in determining a price under subsection (1)"

Recognising that the volume of sales criteria is comprehensively met, and the TMRO's conclusion that the market situation finding is concerned only with the suitability of domestic sales for the purposes of assessing normal value<sup>vi</sup>, the ASA respectfully request that the re-investigation by Customs as to whether a particular market situation exists focus on whether normal values can be established from transactions in the ordinary course of trade in the country of export ( China) rather than the evaluation of alternate government policies.

The suggestion that whether a particular market situation exists should be on the basis of " more likely than not"<sup>vii</sup> is grossly inappropriate in our view and at odds with the hierarchy of establishing normal value based on sales in the ordinary course of trade as embodied in the Customs Act 1901 and the Agreement on Implementation of Article VI of the General Agreement on Tariffs & Trade 1994<sup>viii</sup>



**2. The calculation of the benchmark used to construct a normal value for Chinese producers under s269TAC(2)(c) of the Customs Act 1901**

Notwithstanding the re-investigation of whether a particular market situation exists in China, the Australian Steel Association notes the TMRO comments that “the constructed normal value for Chinese HSS producers was not, and could not have intended to be, a true reflection of the true market conditions in China, because the market situation finding meant that Customs did not consider it to have regard to the true market conditions in China”<sup>ix</sup>

The ASA note that the utilisation of constructed costs have resulted in the reversal of otherwise negative dumping margins into significant positive dumping margins.

The ASA request that, subject to the re-investigation of whether a particular market situation exists, Customs re-investigate the basis of calculations used to construct a normal value, considering:

- Uplifted HRC values & the basis thereof.
- Inflated profits ascribed on normal values premised on prices paid in the ordinary course of trade, (i.e: prior to substitute HRC and narrow strip costs), being applied to an uplifted normal value determined by artificial construction<sup>x</sup>
- That the application of any weighted averaging of costs, of itself, results in an uplifted dumping margin calculation than would apply from a best practice, competitive producer.

**3. The calculation of the export price, and if necessary the dumping margin for Alpine and all other relevant exporters such as those from whom Stencor imports HSS:**

The Australian Steel Association requests that as part of Customs re-investigation of certain HSS findings that any Ascertained Export Price (AEP) be denominated in the currency of which the exported goods are made consistent with the Customs Dumping and Subsidy Manual (August 2012)<sup>xi</sup> and s269TAB (1)(a)(ii)

**4. The calculation of the dumping margin for ‘selected non co-operating exporters’**

The Australian Steel Association support the decision of the TMRO in recommending that the Minister direct Customs to re-investigate the calculation of the dumping margins for residual exporters in accordance with s269TG(3B) and to recommend a rate for new exporters.<sup>xii</sup>



## 5. Decision relating to the publishing of a countervailing duty notice ( investigation findings 5 & 6)

The Australian Steel Association refrains from commenting on the whether State invested enterprises are public bodies as the basis of determining whether HRC supplied under Program 20 was provided for at less than adequate remuneration preferring to focus, by contrast, on the corresponding situation for the Applicant.

We note that in considering supply inputs:

- Arrium is one of Australia's largest exporters of iron ore outside the three (global) majors<sup>xiii</sup>.
- Arrium (including Onesteel ATM) is the recipient of a direct \$64M government subsidy<sup>xiv</sup> as part of a \$300M Australian steel producers subsidy program.

The ASA request that as part of the re-investigation of certain HSS findings that Customs consider the significant advantage that the Applicant has in low cost inputs as the results of being a major iron ore producer.

Additionally we request that the direct Government subsidies received by the Applicant be offset against any nominal dumping margin and be part of any consideration of material injury.

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<sup>i</sup> Decision of the Trade Measures Review Officer- Hollow Structural Sections, 14 December 2012, paragraph 40.

<sup>ii</sup> Decision of the Trade Measures Review Officer- Hollow Structural Sections, 14 December 2012, paragraph 83 to 108

<sup>iii</sup> Decision of the Trade Measures Review Officer- Hollow Structural Sections, 14 December 2012, paragraph 83 to 108

<sup>iv</sup> Australian Government: Department of Industry, Innovation, Science, Research & Tertiary Education; A Plan for Australian Jobs – The Australian Governments industry and Innovation Statement; February 2013

<sup>v</sup> World Steel Association: <http://www.worldsteel.org/statistics/crude-steel-production.html>

<sup>vi</sup> Decision of the Trade Measures Review Officer- Hollow Structural Sections, 14 December 2012, paragraph 110

<sup>vii</sup> Onesteel ATM: Letter 8 February 2013; paragraph 24

<sup>viii</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs & Trade 1994 PART 1; Article 1 & 2

<sup>ix</sup> Decision of the Trade Measures Review Officer- Hollow Structural Sections, 14 December 2012, paragraph 138

<sup>x</sup> Statement of Essential Facts No 177: 6.5 Determination of profit for constructed normal values in China; page 32

<sup>xi</sup> Customs Dumping & Subsidy Manual ( August 2012) Section 6

<sup>xii</sup> Decision of the Trade Measures Review Officer- Hollow Structural Sections, 14 December 2012, paragraph 201

<sup>xiii</sup> Arrium website: <http://www.arrium.com/our-businesses/arrium-mining>

<sup>xiv</sup> Onesteel ASX Release 30 January 2012