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Review of hollow structural sections exported by Dalian Steelforce

Following requests from Dalian Steelforce Hi-Tech Co., Ltd. (Dalian Steelforce) for an understanding of the source of information used to determine the benchmark hot-rolled coil (HRC) prices in the review of measures, the Anti-Dumping Commission (the Commission) has advised that it is unable to provide the relevant data due to the proprietary nature of the HRC pricing data.

Dalian Steelforce makes the following observations on the Commission's use of confidentiality for refusing to provide access to the identity of the data provider and the data used to determine the relevant HRC benchmarks.

Firstly, Dalian Steelforce is not requesting information that can be considered to be confidential to any of the interested parties involved in the review. As noted by the Commission, the data is taken from a 'reputable independent source' in its view. If so, then that information would be available to any party prepared to subscribe to the data service.

Dalian Steelforce notes that the Statement of Essential Facts No. 285 (SEF 285) references the use of Steel Business Briefing HRC pricing data in the final report (Report 177) from the original HSS investigation. That demonstrates that the Commission has previously informed interested parties of the source of information used to benchmark HRC prices. Dalian Steelforce further notes that the Commission has previously provided it with Steel Business Briefing HRC pricing information used to benchmark HRC prices in previous duty assessments. This information

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would equally be considered to be proprietary information but it did not prevent the Commission from providing it to interested parties.

Secondly, to ensure that the Commissioner complies with his obligations to maintain a public record in accordance with s.269ZJ of the Customs Act 1901 (the Act), all relevant information must be placed on the public record unless information given by a person 'is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests'.

Once again, Dalian Steelforce does not consider that the data or the identity of the data provider, can reasonably be argued to be either confidential or information that would adversely affect a person's business or commercial interests. To that end, Dalian Steelforce observes that there is no claim of confidentiality or adverse affect on the public record by any interested party to the review. In those circumstances, the Act clearly requires the Commissioner to place the relevant information on the public record.

The requirements of s.269ZJ of the Act have been interpreted by the Federal Court in *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice & Customs*. Of particular relevance in this case are Buchanan J¹ observations and interpretations of the Commissioner's obligations in maintaining a public record:

89 *Counsel for the Minister argued that the requirements of natural justice had been substantially curtailed by the confidentiality requirements of the Act. It was submitted that those requirements amounted to an exhaustive statement of any requirement to afford procedural fairness. There are two principal difficulties with this contention. The first is that the Act contains no express statement to support a conclusion that the provisions relied upon have extinguished such an important right. The second is that the provisions in question seem to me to be directed at quite different objectives. Indeed, their focus is less on the imposition of confidentiality restrictions, although the need for confidentiality is a premise of the whole scheme, than on the need to maintain a very high degree of transparency consistently with that premise.*

91 *Far from emphasising any overruling requirement of confidentiality, s.269ZJ imposes an obligation on the CEO to ensure that a claim for confidentiality does not result in inadequate information to interested parties except in very limited circumstances.*

By refusing to provide the relevant benchmark data and reveal the identity of the data provider, the Commission is failing to provide procedural fairness to Dalian

¹ *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice & Customs* [2008] FCA 443, para 91.

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Steefforce and restricting its ability to properly defend its interests with respect to this particular matter.

Dalian Steefforce therefore requests the Commission to reconsider its position and place the relevant information on the public record so that all interested parties are provided equal opportunity to respond to the essential facts outlined in SEF 285.

Yours sincerely

John Bracic