

Level 26, 385 Bourke Street, Melbourne VIC 3000
 GPO Box 1533N, Melbourne VIC 3001 | DX 252 Melbourne
 T +61 3 8602 9200 | F +61 3 8602 9299

hunt & hunt
 lawyers

8 August 2012

The Director
 Operations 1
 International Trade Remedies Branch
 Australian Customs and Border Protection Service
 Customs House
 5 Constitution Avenue
 CANBERRA ACT 2601

Our ref: ATH
 Matter no: 9554368

By email: ltrops1@customs.gov.au

Dear Director

**Hot Rolled Coil Steel exported from Japan, the Republic of Korea, Malaysia and Taiwan
 Initiation of an Investigation into alleged dumping
 Submission by POSCO
 Non-confidential version**

We act on behalf of POSCO.

We have been instructed by POSCO to make the following submission to the Australian Customs and Border Protection Service ("**Customs**") in relation to the investigation ("**Investigation**") referred to in Australian Customs Dumping Notice No. 2012/30 ("**ACDN**").

Please note that this is the **non-confidential** version of this Submission. A confidential version has also been provided.

1. Definitions

For the purposes of this Submission, the following definitions have been adopted.

- (a) "**ABS**" means the Australian Bureau of Statistics.
- (b) "**ACDN**" means Australian Customs Dumping Notice No. 2012/30 in relation to the Application.
- (c) "**Act**" means the *Customs Act 1901* (Cth).
- (d) "**AD Coote Submission**" means the submission made on behalf of A.D. Coote & Co. dated 11 July 2012 held on the Public File.
- (e) "**Application**" means the application for a dumping duty notice relation to certain HRCS exported from Japan, the Republic of Korea, Malaysia and Taiwan, made by BSL on behalf of the Australian Industry manufacturing certain HRCS as referred to in the ACDN.
- (f) "**Australian Industry**" has the same meaning as in the Application and in the Consideration Report.
- (g) "**BSL**" means BlueScope Steel Limited, being the applicant in the Application.

Page 2
The Director, Operations 1
Australian Customs and Border Protection Service

- (h) **"BSL Visit Report"** means the Visit Report of the Australian Industry issued by Customs in June 2012 and held on the Public File.
- (i) **"CFR"** means CFR according to INCOTERMS.
- (j) **"CIF"** means CIF according to INCOTERMS.
- (k) **"Consideration Report"** means Consideration Report Number 188 issued by Customs in response to the Application dated 14 June 2012.
- (l) **"Customs"** means the Australian Customs and Border Protection Service.
- (m) **"DDP"** means DDP according to INCOTERMS.
- (n) **"Exporter Questionnaire"** means the non-confidential exporter questionnaire and the various appendixes marked "A" to "G" submitted by POSCO and contained in Non-Confidential Attachment "A".
- (o) **"FCA"** means FCA according to INCOTERMS.
- (p) **"FIS"** means delivered free into store.
- (q) **"FOB"** means free on board.
- (r) **"Ford"** means Ford Motor Corporation of Australia Limited.
- (s) **"Ford Submission"** means the submission made by Ford dated 2 August 2012 and held on the Public File.
- (t) **"GFC"** means the Global Financial Crisis.
- (u) **"GM"** means General Motors.
- (v) **"GM Standards"** means General Motors Standards.
- (w) [REDACTED]
- (x) **"GUC"** means goods under consideration as described in the Application.
- (y) **"Holden"** means GM Holden Limited.
- (z) **"Holden Submission"** means the submissions made by Hunt & Hunt Lawyers on behalf of Holden dated 25 July 2012 and held on the Public File.
- (aa) **"HRCS"** means Hot Rolled Coil Steel as described in the Application and the Consideration Report.
- (bb) **"INCOTERMS"** (International Commercial Terms) means the standard accepted commonly used trade terms and conditions utilised in international trade as published by the International Chamber of Commerce and entitled "INCOTERMS 2000".
- (cc) **"Investigation"** means the investigation by Customs in response to the Application.
- (dd) **"ISSB"** means ISSB Limited.

- (ee) **"Japanese Submission"** means the submission dated 19 July 2012 lodged by Minter Ellison on behalf of a number of Japanese exporters held on the Public File.
- (ff) **"Korea"** means the Republic of Korea.
- (gg) **"Material Injury Direction"** means the ministerial direction on material injury dated 1 June 2012 published in Australian Customs Dumping Notice No. 2012/24.
- (hh) **"Minister"** means the Minister for Home Affairs.
- (ii) **"Nippon Steel Submissions"** means the submission made on behalf of Nippon Steel by Clayton Utz lawyers dated 9 July 2012 and 23 July 2012 held on the Public File.
- (jj) [REDACTED]
- (kk) **"PMV"** means passenger motor vehicle.
- (ll) **"PRC"** means the People's Republic of China.
- (mm) **"Public File"** means the electronic public file maintained by Customs in relation to the Investigation.
- (nn) [REDACTED]
- (oo) **"SK Steel"** means SK Steel Australia Pty Ltd.
- (pp) **"SK Steel Visit Report"** means the Importer Visit Report regarding SK Steel issued by Customs in July 2012 and held on the Public File.
- (qq) **"Steel Association Submission"** means the submission by the Australian Steel Association Inc. dated 25 July 2012 and held on the Public File.
- (rr) **"Toyota Submission"** means the submission of Toyota Motor Corporation Australia Limited dated 25 July 2012 and held on the Public File.
- (ss) **"Toyota Tshusho Submission"** means the submission of Toyota Tsusho (Australasia) Pty Ltd dated 24 July 2012 and held on the Public File.
- (tt) **"WTO"** means the World Trade Organisation.
- (uu) **"WTO Anti-Dumping Agreement"** means the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement).

2. POSCO

As stated above, we act on behalf of POSCO.

2.1 *The business of POSCO*

The history of POSCO dates back to 1968 when it started as Pohang Iron and Steel Co Ltd, which was established as part of a national Korean commitment towards establishing a general steelworks industry in Korea. Today, POSCO is one of the world's leading steelmakers and continues to lead the Korean steel industry.

POSCO has its corporate headquarters in Pohang in Korea, but also operates its marketing, sales, finance, raw materials purchasing, strategic planning and some administrative offices from Seoul.

POSCO owns and operates two integrated steel mills located at Pohang and Kwangyang (also known as Gwangyang) in Korea. POSCO produces a full range of steel products at these two mills, including hot rolled coil and sheet, cold rolled coil and sheet, electrical coil and sheet, galvanised coil and sheet, plate, wire rod and stainless steel coil and sheet. POSCO's steel products are sold in Korea and exported throughout the world, including to Australia.

Further details of the operations of POSCO can be found at its website at www.posco.com.

2.2 Potential effect of the application of measures on POSCO

As an exporter of HRCS from Korea, our client will be directly affected by the imposition of any anti-dumping measures. The potential application of anti-dumping duties would represent a significant commercial disadvantage to our client. In particular, the imposition of interim measures at any stage prior to Customs' final report would cause substantial financial disadvantage to our client. Our client is a party to global pricing agreements where prices for HRCS are set well in advance and remained fixed for a period of time. As a result, it will be very difficult for our client to recover any duties paid. Even if interim measures were revoked on a final determination, the refund of duties would not relieve the administrative difficulties and financial cost of recovering any duties paid.

The imposition of interim measures (and any final measures) will also affect a range of our client's customers, both importers and end users alike. For example, POSCO's customers such as [REDACTED] will experience an increase in costs associated with any anti-dumping duties payable on HRCS. In turn, these additional costs will ultimately be passed on to Australian consumers as the final purchaser of PMV.

Our client is also of the opinion that the imposition of any interim measures is inappropriate, given there is significant and additional investigation and research that needs to be undertaken in respect of the Investigation, a fact Customs itself acknowledges.

2.3 POSCO export of HRCS

In the course of its business, POSCO exports HRCS from Korea. In regards to exports of HRCS to Australia, POSCO has [REDACTED] of distribution. POSCO sells HRCS for export to [REDACTED]

For these purposes, our client can identify that it has sold HRCS to [REDACTED] for export to Australia during the period under consideration. POSCO is of the view that it should be treated as the exporter in all of these transactions for the purposes of calculating export price. This is discussed in further detail at paragraph 4.1 below. POSCO would also be pleased to discuss this further during a verification visit from Customs.

2.4 Ordering of HRCS from POSCO

Details of the methodology adopted [redacted] of distribution referred to in paragraph 2.3 are as follows:

(a) [redacted]

(1) In general, for export sales of HRCS from POSCO to [redacted]
[redacted]

(2) The comments in the preceding paragraph 2.4(a)(1) are of a general nature. However, in relation to arrangements regarding the price for HRCS sold by POSCO to [redacted] a global price is negotiated between [redacted]. Once the global price has been set, it is the responsibility of the local business unit [redacted] to negotiate with POSCO as to the volume of HRCS which it requires and the time and place for delivery. POSCO's prices of HRCS are thus fixed on an international basis. Accordingly, POSCO's prices for HRCS are not subject to local variation and are not affected by any alleged dumped prices (which is denied).

(b) [redacted]

For export sales of HRCS from POSCO to [redacted]
[redacted]

POSCO is able to provide further detail on these processes at the verification visit should Customs require.

2.5 Submission only in relation to Korea

As set out above, POSCO exports HRCS from Korea. Accordingly, the Submission only relates to HRCS exported from Korea.

3. An Interested Party

Based on the above, we are of the view that POSCO is an "Interested Party" for the purposes of the Act and is entitled to make the Submission. This conclusion appears to be entirely consistent with the approach taken by Customs.

Page 6
The Director, Operations 1
Australian Customs and Border Protection Service

4. Exporter Questionnaire

We now **attach** a non-confidential version of the Exporter Questionnaire which has been completed on behalf of our client at Non-Confidential Attachment "A". This is comprised of the narrative response to the Exporter Questionnaire together with a variety of appendixes marked from "A" to "G". This is now submitted in accordance with the agreed due date for the submissions. Some additional comments regarding the Exporter Questionnaire are discussed below.

4.1 Calculation of export price

(b) Arms length transactions

As mentioned above, POSCO is of the view that it should be deemed the exporter for all export transactions when calculating the export price. In calculating the export price for POSCO, it is our view that the Customs should use the method in s 269TAB(1)(a) of the Act. In other words, the appropriate export price is the price paid by the importer to purchase HRCS from POSCO, less any relevant adjustments. It is POSCO's view that all export sales [REDACTED] were arms length transactions within the definition of s 269TAA(1) of the Act, and thus the actual price paid should be taken to be the relevant export price.

[REDACTED]

[REDACTED]

4.2 Calculation of normal value

In regards to the calculation of the normal value of the goods exported by POSCO to Australia, it is our contention that the calculation that should be adopted is that contained in s 269TAC(1) of the Act. In other words, the appropriate calculation of the normal value of the goods should be based on POSCO's domestic sales. POSCO is of the view that there are no circumstances, such as an absence of relevant sales or the existence of a particular market situation, which result in the normal value of the goods being unable to be ascertained under s 269TAC(1) of the Act.

4.3 Calculation of dumping margins

It is the view of our client that there is no reason to depart from Customs' policy of determining dumping margins using the weighted average approach. Accordingly, the appropriate method of calculating dumping margins is that contained in s 269TACB(2)(a) of the Act.

5. General Approach of POSCO to the Application

Subject to the specific comments below, our client rejects the submission by BSL that the Australian Industry has suffered material injury from Korean exports of HRSC that have allegedly been sold at artificially low prices through dumping practices in Korea, contrary to the Act.

On this basis, our client does not support the imposition of anti-dumping measures such as those requested by BSL and contemplated by the Consideration Report.

6. Commentary on Specific Aspects of the Application

It is the view of our client that there are a number of deficiencies in the Application. These are discussed in more detail below.

6.1 Exclusion of certain countries

An initial concern is that the Application has focused solely on exports from certain countries, including Korea. POSCO notes that the information supplied in the Application states that imports into Australia other than those from Korea, Japan, Malaysia and Taiwan made up 22.4% of the total imports to Australia in the fiscal year of 2011/2012. These "other imports" include HRCS exported from PRC, India and New Zealand.

In the BSL Visit Report, Customs has identified that on the basis of the ISSB data, BSL contends that the volume of imports of HRCS from the PRC has dropped significantly since the introduction of certain export taxes in the PRC in 2008, even though past imports from the PRC have previously been significantly higher. As such, BSL has concluded that imports from the PRC have no bearing on the injury allegedly suffered by the Australian Industry by dumped prices and that any injury is as a result of dumped prices from the four nominated countries. Customs concluded that it was difficult to draw any conclusions based on BSL's claims.

POSCO is entirely supportive of Customs' conclusion in the BSL Visit Report. POSCO is of the view that imports from the PRC and their effect on the Australian Industry should be further assessed. POSCO believes that the PRC is a major player in the HRCS market in Australia as a price-setter. In fact, BSL's Annual Report of 2011 recognised that the PRC had an impact on BSL's price data. In addition, POSCO makes reference to the fact that exports of HRCS from the PRC are subject to anti-dumping measures in the United States and have been so for a number of years. Given the nature of global markets, POSCO is concerned as to the basis on which BSL has selectively excluded exports from the PRC from the Investigation. In the view of POSCO, exports from the PRC are directly relevant to the issues of alleged material injury caused by the alleged dumping.

POSCO notes that according to the ISSB data, the imports from the PRC comprise almost a quarter of the total imports to Australia during 2011/2012 (at 22.4%). Given that imports from PRC are relatively high, it is not appropriate for Customs to proceed with the Investigation without verifying the exports from the PRC. In our view it is impossible for Customs to make an accurate finding regarding any alleged dumping and any alleged material injury without a proper investigation of HRCS exported from the PRC. As a result, POSCO proposes to request that the Minister initiates his own investigation into potential dumping of HRCS from the PRC to be conducted contemporaneously with the Investigation so that proper consideration and weight is given to exports from all relevant countries and the likely impacts of exports from all countries.

6.2 Concerns regarding the data provided by the Applicant

(a) BSL's data source

POSCO is concerned that the Investigation was initiated on the basis of data obtained by BSL from ISSB, rather than on the basis of import data provided by the ABS.

BSL alleges that ISSB "is a reputable European agency that specialise in the supply of import and export trade data". However it is noted that ISSB is not a government agency like the ABS. Rather, ISSB is a corporation that provides reports on trade statistics to companies or individuals for a fee.

There are a number of issues with the use of data from ISSB:

- (1) it is not clear where or how ISSB obtains its data. This fact creates a level of uncertainty surrounding the accuracy of ISSB's statistics. As it is not a government agency, its ability to obtain the relevant data should be questioned;
- (2) ISSB provided export data from the nominated countries, as opposed to import clearance data. BSL recognises that this produces a variance in results, however it alleges that it would only be a slight difference to Australian import clearance data that would be due to timing differences. We believe that this assertion should not be relied upon by Customs and that any information regarding imports of HRCS to Australia and the prices for those imports should only be based on actual, verified data; and
- (3) we have not been provided with the terms of reference under which ISSB provided its report to BSL. The terms of reference could affect the result of the information provided by ISSB.

It is clear from the Consideration Report and the BSL Visit Report that Customs also took issue with the validity of the statistics from ISSB. The Consideration Report states that Customs tested the data provided by ISSB by comparing it with its own data. Customs found that the data contained in BSL's application showed similar import volumes to their own data. Customs then goes on to state that a more accurate assessment of import volumes would need to be conducted. In addition, comments made by Customs throughout the BSL Visit Report regarding the difficulty of drawing conclusions solely based on BSL's claims further emphasises that there are concerns with the validity of the ISSB data.

We would strongly encourage Customs to verify the ISSB data obtained by BSL for use in its Application and emphasise the necessity of Customs to undertake a more thorough and accurate assessment of import volumes. Such verification will yield a more accurate representation of the effect of any alleged dumping of HRCS (which is denied).

(b) Alleged confidentiality of BSL's data source

In order to obtain the statistics from ISSB, it is clear that it would have been necessary for BSL to pay a fee to ISSB, which sells monthly and annual

publications regarding world and country steel statistics and also produces "custom" reports. As such, ISSB statistics are available to any interested party should they pay the required fee.

It is noted that Customs *may* treat information relevant to the industry that has been purchased from a third party as confidential. In these circumstances, it is argued that Customs should treat the information BSL obtained from ISSB as non-confidential for the following reasons:

- (1) any party could obtain the same statistics from ISSB for a fee;
- (2) the statistics from ISSB are generalised data. The data is not specific to certain companies and no issues of confidentiality arise;
- (3) if the statistics were available from the ABS, all interested parties would have access to the statistics; and
- (4) in the interests of fairness, all interested parties should have access to the ISSB statistics in order to conduct their own assessment as to the validity of the statistics.

The fact that the ISSB data has been treated as confidential has made it very difficult for all interested parties, POSCO included, to refute the allegations of the Application. This point was raised in the Nippon Steel Submissions wherein it was argued that interested parties are unable to adequately defend their interests owing to the fact that the Application failed to provide sufficient information. Accordingly, POSCO requests that Customs reconsiders its approach to the confidentiality of that information and that all interested parties be provided with a copy of the statistics BSL secured from ISSB.

(c) ***Inadequate non-confidential version of BSL's data source***

Without prejudice to the comments in the preceding paragraph regarding the production of the ISSB report sourced by BSL, POSCO is also of the view that BSL has failed to provide an adequate "non-confidential" version of the material from ISSB to enable it to promptly review that information and make this Submission. We consider that in failing to require BSL to provide non-confidential summaries of the confidential information, Customs is in breach of Article 6.5.1 of the WTO Anti-Dumping Agreement. This same point was raised in the Nippon Steel Submissions. Accordingly, POSCO requests that an adequate "non-confidential" version be supplied by BSL.

6.3 Like goods

(a) ***BSL's allegations as to like goods***

BSL alleges that its HRCS are "like goods" to the imported HRCS on the basis of the following:

- (1) the HRCS produced by the Australian Industry has a physical likeness to the imported goods;
- (2) the imported goods are manufactured to International Standards that are equivalent to Australian Standards;

- (3) the Australian Industry competes directly with imported HRCS in the Australian market;
- (4) both imported and locally produced HRCS are manufactured in a similar manner and via similar production processes; and
- (5) both imported and locally produced HRCS have comparable or identical uses.

According to the Consideration Report, Customs has concluded that there is a physical and commercial likeness between the goods produced in Australia and the imported goods. The Consideration Report states that BSL's HRCS have a physical likeness to the imported HRCS products because both products are manufactured according to equivalent standards. In other words, Customs has concluded that because the Australian Standards are equivalent to International Standards, the imported goods have a physical likeness to the goods produced by the Australian Industry. Furthermore, Customs considers that as the imported goods would comply with Australian Standards, the imported goods would compete directly with the goods produced in the Australian Industry and thus have a commercial likeness to the HRCS produced by BSL.

(b) ***Response to claims by BSL and Customs***

In response to the above conclusions of BSL and Customs, POSCO states as follows:

- (1) the HRCS products produced by BSL are manufactured according to Australian Standards and do not meet the specifications of GM Standards. In contrast, POSCO manufactures HRCS that meets the specifications of GM Standards;
- (2) POSCO can currently roll HRCS to a thinner grade than that of BSL;
- (3) BSL does not have the equipment necessary to roll HRCS to a grade thinner than 1.5mm; and
- (4) POSCO produces HRCS that has a higher strength elongation than the HRCS manufactured by BSL.

(c) ***POSCO's views on like goods***

POSCO is of the view that the HRCS it produces for the automotive industry are not "like goods" to those produced by the Australian Industry for the following reasons:

- (1) there are physical differences between the HRCS produced by BSL and the HRCS produced by POSCO, in that POSCO's HRCS can be rolled to a thinner grade and has a higher strength elongation;
- (2) POSCO's HRCS is produced to the specifications contained in GM Standards, whereas BSL's HRCS is not. This means that in some circumstances, BSL's grades do not meet the required specifications of some automotive manufacturers. Consequently, BSL's products

do not have comparable or identical end uses to the HRCS manufactured by POSCO for use in the automotive industry and are not substitutable;

- (3) as the products produced by BSL are inferior in elongation strength, BSL's products are known to crack during the pressing/forming process. Given that POSCO's HRCS are superior in quality, consumers prefer POSCO's products over BSL's; and
- (4) for the reasons outlined in (1) to (3) above, BSL's HRCS does not compete directly with POSCO's HRCS produced for the automotive industry.

POSCO submits that its HRCS products are not "like goods" to those produced by BSL for the automotive industry and consequently POSCO's HRCS should be exempt from the Investigation.

6.4 Separate assessment of markets

BSL identifies three market sectors to which HRCS products are supplied, which are as follows:

- (a) the pipe and tube market;
- (b) the automotive market; and
- (c) the general manufacturing market, encompassing agriculture, engineering construction, mining, oil and gas, non-residential construction, residential construction and transport industries.

We note that Customs contends that it is appropriate to consider the three separate markets together. The Consideration Report states that it is clear that both the Australian Industry and importers of HRCS compete across each market segment in Australia via the same distribution channels. However, the Nippon Steel Submissions contended that these three segments should be treated as separate because the markets are based on different products for different customer bases.

In our view, we believe that the Nippon Steel Submissions are correct. HRCS is sold through three very distinct and different market sectors, which all have very different considerations when it comes to issues of pricing and material injury. For example, with respect to pricing of HRCS for the automotive sector, for POSCO's sales to [REDACTED] prices are based on global pricing agreements, which is then subject to separate local negotiations as to the volume and dates for supply.

Further, we note that on page 30 of the Application, BSL provides examples of circumstances in which it has suffered "material injury" in different segments of the market for HRCS. This suggests that there is not one consistent approach to the market for the use of HRCS in Australia. Accordingly, POSCO is of the view that there should be three separate market assessments regarding the material injury suffered to the Australian Industry, as such an assessment will produce a more accurate reflection of the effect of any potential dumping of HRCS (which is denied). It will also ensure that BSL's loss of market share is accurately quantified in relation to each market segment, as it is the opinion of our client that BSL's market share has not decreased in the

automotive market segment and that Korean exporters have generally not increased their sales of HRCS to Australia.

6.5 Calculation of export price, normal value and dumping margins

(a) *Reliance on ISSB data*

We note that many of the claims on export value, normal value and dumping margins in the Application are allegedly based on information provided by ISSB. However, we note that:

- (1) the ISSB data has not been provided in its entirety;
- (2) a non-confidential version of the ISSB data has not been provided;
- (3) the Applicant has not provided the basis on which ISSB was instructed to provide its report;
- (4) there are other proprietary providers of such information; and
- (5) Customs will be securing "real" and verified information on normal value export price and dumping margins from various exporters and importers.

Accordingly, we believe that Customs should not proceed based on the material contained in the ISSB report provided by BSL alone. Customs should have full regard to the information provided by the various exporters and importers, which in our view will produce different and more accurate results to those provided by BSL in the Application.

(b) *Other material (In addition to the Exporter Questionnaire)*

Our client has provided its own material sourced from [REDACTED] regarding normal value and export prices for HRCS exported to Australia from Korea. This data is contained in Confidential Attachment "B".

When providing this information we make the following further observations:

- (1) From our review it appears that the figures provided by BSL from ISSB may be based on benchmark not actual prices; and
- (2) Note to Table B3.1 on page 39 of the Application refers to sources for normal values for Korean HRCS, but the supporting documentation has not been provided. Paragraph 3 on page 39 also suggests that the material is provided in a confidential attachment but that has neither been provided nor has there been a non-confidential version of that information provided.

As you will see from the averages in Confidential Attachment "B", there are different potential calculations of export price, normal value and dumping margins which are significantly different to those claimed by BSL. POSCO would expect that Customs would find similar variances in normal value and export margins from other providers. Further, POSCO would also expect that there will be different results from the verification to be undertaken by Customs from exports and other importers of HRCS.

6.6 Material Injury

(a) **Period of Injury**

POSCO is of the view that it is inappropriate for Customs to proceed with the investigation when BSL solely alleges "material injury" for its failure to secure additional sales for one financial year following losses of sales to all HRCS producers after the GFC. POSCO believes that this 12 month period is an entirely unreliable basis on which to base any assessment on material injury to the Australian Industry and impose any measures, especially taking into account the time taken to recover from the GFC and other relevant injury factors. It is the view of POSCO that alleged material injury must be assessed for a period longer than a 12 month period (in accordance with normal practice) to properly identify whether any alleged injury to the Australian Industry has been caused by the alleged dumping or is a result of other mitigating circumstances.

(b) **Compliance with the Material Injury Direction**

It is the view of POSCO that the type of material injury claimed by BSL does not represent the type of material injury that would support the imposition of measures, whether pursuant to the Act, or in accordance with the Material Injury Direction. In particular, we note that the Minister has directed that a loss of market share should be considered with a range of relevant injury indicators before material injury may be established. In the view of POSCO, there are a number of other relevant injury indicators which have been experienced by BSL including, without limitation, appreciation of the Australian dollar, increase in price for electricity and raw material prices, increases in iron ore and coal coking prices and a general reduction in demand for the entire steel industry. It is the submission of POSCO that it is the combination of those factors (described elsewhere by BSL representatives as the "perfect storm") which is the cause of material injury to BSL for the one year period, rather than any alleged dumping of HRCS.

(c) **General allegations of Injury**

BSL alleges that it is has suffered material injury due to the dumping of HRCS products as follows:

- (1) price depression;
- (2) price suppression;
- (3) reduced profits;
- (4) reduced profitability;
- (5) reduced revenues;
- (6) reduced employment;
- (7) reduced wages expense; and
- (8) reduced return on investment.

In the BSL Visit Report, Customs concludes that on the basis of the information provided by BSL, BSL has suffered injury in the form of reduced profits and profitability, price depression and suppression, reduced revenue and reduced sales volumes. However, Customs notes that it was unable to identify whether loss of market share and price undercutting has occurred prior to considering the data provided by other importers. Our client is of the opinion that Customs should not make any conclusions regarding material injury suffered by BSL prior to considering all the information provided by other interested parties.

(d) **Concerns with the statistics used**

The statistics provided by BSL to demonstrate the above alleged injury are discussed in more detail below.

(1) **Index of sales quantities**

BSL provided the following statistics in relation to sales quantities:

Year	Australian Industry (%)	Dumped Imports (%)
2009/10	84.7	85
2010/11	90.4	135
2011/12	78.9	104.9

At the outset, we note that the statistics provided by BSL are based on "index" years. However, such an index can be misleading and POSCO believes that any statistics should set out actual quantities of sales rather than those based on an "index year" of sale quantities.

BSL alleges that the dumping occurred in 2010/2011, where BSL experienced a 7% rise in sales volumes and the alleged dumped imports experienced a 59% rise. BSL alleges that the price dumping affected its sales volumes in 2011/2012.

However, it is noted that both BSL and the alleged dumped imports experienced an increase in sales volumes in 2010/2011 after the GFC. Furthermore, both BSL and the alleged dumped imports had a reduction in sales volumes in 2011/2012, a fact that BSL has not highlighted. In fact, the allegedly dumped imports experienced a greater decrease in sales than BSL. BSL's reduction was 11.5% and the allegedly dumped imports declined by 30.1%. This point was also raised in the Nippon Steel Submissions where it was argued that these statistics support the conclusion that the decline was due to weaker demand in Australia.

In addition, the sales quantities provided by BSL (on pages 20 – 21 of the Application) may be misleading. They provide no comparison to the sale quantities of the alleged dumped imports. Consequently, although these statistics provided by BSL demonstrate a reduction in sales volumes, on the basis of the 30.1% reduction in sales volumes

experienced by the alleged dumped imports, it can be assumed that the alleged dumped imports would also be able to demonstrate a reduction in sales quantities.

(2) **Index of production variations (cost to make and sell)**

The figures provided by BSL indicate that it has experienced an increase in production costs each year since 2009/2010. Although BSL states that these have been adjusted to take into account the closure of the Blast Furnace and the Westernport Hot Strip Mill in 2011, they arguably do not take into account other factors, such as alterations to holdings costs, the effect of the high Australian dollar, the increase in raw material prices and the increase in iron ore and coal coking prices.

(3) **Index of price variations**

It is noted that BSL's average selling price for locally produced HRCS products rose in 2010/2011 (from 76.50% to 79.26%) and declined slightly in 2011/2012 (to 77.42%). However, BSL alleges that the average cost-to-make-and-sell HRCS has increased by more than 10%. In other words, BSL alleges that the cost of producing HRCS products has risen, but its sales prices have decreased, resulting in a decrease in profitability. BSL also contends that it has had to reduce its sales prices to maintain sales volumes and market share.

In response to these statistics, it is noted that the price variations each year are only slight, around 2 – 3%. Also, as mentioned above, it would be expected that BSL's production costs would rise given the increase in the Australian dollar and the increase in raw material prices and iron ore and coal coking prices.

Moreover, a reduction in demand in the steel industry (which is clearly demonstrated by the reduced sales quantities experienced by all producers of HRCS), would contribute to a reduction in sales prices. Furthermore, as the alleged dumped imports sales also decreased in 2011/2012, it would be expected that the importers would also experience a reduction in price variations.

(4) **Export prices regarding HRCS exported from Korea - generally**

It is noted that BSL has not obtained an average of the export prices of HRCS products exported from Korea in Table B-3.1 – "Prima Facie Normal Values for HRCS steel (A\$/MT)" on page 39 of the Application. BSL merely includes the alleged prevailing domestic prices for POSCO HRCS products.

It is our client's opinion that these statistics provided by BSL are entirely unreliable. Data provided by POSCO in the Exporter Questionnaire demonstrates that the actual domestic price of POSCO's HRCS is significantly less than that provided by BSL. This data has been reproduced and is contained in Confidential Attachment "C". Accordingly, POSCO contends that Customs should not rely on the data provided by BSL without adequate verification of

the export price based on the Exporter Questionnaire and the information provided by other Korean exporters.

In addition, it is noted that after a comparison with its own data, Customs considers BSL's statistics to be reasonable. However, Customs identifies that when it compared BSL's domestic prices for Korea with its own data, Customs' data was significantly lower than the price provided by BSL. Customs allege that this was due to one month in which they believe the prices were incorrectly recorded. No evidence of this has been supplied for us to test the validity of Customs' statement.

BSL also alleges that the domestic value of Korean values require an uplift to take account of the inland freight included in the ISSB FOB export prices. BSL then goes on to state that the ISSB FOB prices are **likely** to include domestic and inland freight. Customs did not agree to the inclusion of an uplift, stating that the inclusion of an adjustment for inland freight would "increase the normal value and therefore any dumping margin found". We strongly support Customs' decision not to adjust the domestic price of Korean values. It is the view of our client that the domestic price should not be altered as BSL cannot actually confirm whether the ISSB FOB prices include domestic and inland freight.

(5) **Export prices regarding HRCS exported from Korea – automotive**

As mentioned above, in relation to HRCS sales by POSCO [REDACTED] there is an agreed international price struck [REDACTED] for all international supplies of HRCS. As a result, the prices of HRCS imports from Korea to Australia are not affected by the alleged dumping of HRCS prices. Further evidence regarding the global pricing agreements can be supplied during Customs verification visit.

(e) ***Separate Investigations and Injury assessments for each country and exporter***

POSCO is of the opinion that Customs should undertake separate injury assessments for each country and for each exporter. At this point, POSCO refers to the ISSB data provided by BSL in the Application at Table B-1.5 "Total Export Tonnes of HRCS to Australia (for years ending March)". In respect of this data, POSCO observes the following:

- (1) imports from Korea slightly decreased in 2010/2011 and only slightly increased in 2011/2012. In other words, import data for Korea has remained relatively stable;
- (2) imports from Taiwan increased dramatically in 2010/2011 (by almost double) and increased again in 2011/2012;
- (3) imports from Japan have dramatically increased in 2010/2011 (by more than 50%) and dramatically decreased in 2011/2012 (again, by more than 50%); and

- (4) imports from Malaysia have decreased in each year of the investigation period.

In our view these statistics demonstrate that any alleged dumping relates predominately to exports from Taiwan. In light of the above statistics, POSCO is of the view that a separate investigation and separate injury assessments for each country and for each exporter is warranted. This is particularly the case given that exports from Korea have remained relatively stable throughout the investigation period, whereas exports from Taiwan have dramatically increased. Accordingly, POSCO contends that a separate investigation and separate injury assessment for each country and each exporter is necessary in order to produce an accurate reflection of BSL's loss of market share (if any). We are of the view that the adoption of this methodology will result in the termination of the investigation in respect of Korea, or at the very least in respect of POSCO.

(f) ***Other causes attributable to injury***

It is the view of our client that BSL has not provided sufficient evidence to demonstrate a decrease in sales volumes or loss of market share. It is POSCO's contention that BSL has only presented a profit reduction, which is arguably attributable to other factors. These are discussed in more detail below.

(1) **Effect of the GFC**

POSCO contends that BSL has not fully factored in the effect of the GFC and the implications this had for the global steel market, such as a worldwide reduction in demand (including in Australia) and an increase in prices for raw materials. POSCO is therefore of the opinion that any assessment of the injury must take into consideration the full effect of the GFC and how this has affected BSL's profitability and alleged loss of market share.

Furthermore, POSCO draws attention to the fact that it is difficult for anyone to fully predict how the market will recover post GFC. Accordingly, as was raised in the Nippon Steel Submissions, it is unreasonable for BSL to assume that post GFC it will be able to recover all costs associated with production and maintain profits and profitability, especially given the recent dubious state of the global financial market.

(2) **Effect of other losses and additional expenditure of BSL**

POSCO contends that BSL has suffered decreased profitability as a result of other losses suffered BSL and additional expenditure incurred by BSL. From the outset, it is noted that both the losses suffered by BSL and the additional expenditure incurred by BSL are a direct result of BSL's internal decision to restructure its business and to significantly reduce its export business.

Regarding other losses suffered by BSL, POSCO refers Customs to the post GFC restructuring of BSL's business in 2011. This restructuring involved a significant reduction of BSL's Australian

export business, the closure of steelworks factories at Port Kembla, including the Blast Furnace and the closure of the Western Port Hot Strip Mill. It is noted that the Western Port Hot Strip Mill was specifically geared to the automotive sector, a fact identified in the Steel Association Submission.

We note that in the BSL Visit Report, Customs has identified that BSL calculated a cost per tonne for both the Port Kembla steelworks and the Western Port Hot Strip Mill and reduced the manufacturing costs in the relevant periods using those costs and the reported production volumes. POSCO agrees with Customs that it is necessary that these costs be removed so that cost trends over the injury analysis period are not distorted.

However, POSCO notes that the following costs incurred by BSL have not been adequately considered by Customs or removed from the analysis of the injury period:

- (A) the costs associated with shutting down and making safe the No. 5 blast furnace;
- (B) the costs associated with the breaking of contracts, particularly for the supply of raw materials;
- (C) the losses involved in the reduction of BSL's export business; and
- (D) redundancy costs.

It is our client's contention that the above costs must be appropriately identified by Customs and removed from any assessment of injury in order to ensure that the material injury claimed to be suffered by the Australian Industry is in fact due to the presence of dumped imports in the market.

Regarding additional expenditure incurred by BSL, POSCO draws attention to the fact that BSL does not have the facilities at Port Kembla to pickle and oil HRCS. HRCS must be produced at Port Kembla and if the HRCS is to be pickled or oiled, it is transported to the pickling line at Western Port. BSL therefore incurs significant transportation charges, which is ultimately passed on to BSL's customers. Accordingly, this fact has contributed to BSL's inability to remain competitive in the HRCS market and is an additional factor that Customs must take into account when assessing material injury.

(3) **Appreciation of the Australian Dollar**

POSCO contends that Customs must consider the effect that the high Australian Dollar would have had on BSL's profitability during the Investigation period. The appreciation of the Australian Dollar has made exports relatively less expensive, especially taking into account fixed prices which are set on a global basis. It is the view of our client that the appreciation of the Australian Dollar would have impacted on the ability of BSL to maintain its market share and accordingly, the

costs consequences associated with this must be identified and isolated from any findings in relation to material injury.

(4) **High cost of raw materials**

POSCO is of the opinion that the significant increases in prices of raw materials over the entire injury period has contributed to BSL's alleged material injury. As mentioned in the Nippon Steel Submissions, the costs of coking coal and iron ore have increased from 30% to 70%. The Steel Association Submission also refers to the fact that the increase in the cost of raw materials has had a profitability impact of over \$1 billion Australian Dollars during and since the Investigation and has had the largest impact on BSL's profitability. Accordingly, the increase in prices for raw materials is an additional factor that must be taken into account by Customs when making an assessment of the alleged material injury to BSL.

(5) **Losses associated with the reduction of BSL's export business**

In regards to losses associated with the reduction of BSL's export business, POSCO contends that any such losses must be adequately identified and isolated from any determination made by Customs in respect of material injury. For example, with the reduction of its export business, BSL would be faced with additional costs associated with the high cost of labour. Based on the BSL Visit Report, our client is of the opinion that these losses have not been adequately identified by either BSL or Customs. Consequently, POSCO contends that Customs must take these factors into account when determining whether material injury has occurred in order for a proper assessment to be made regarding the effects of any alleged dumping (which is denied).

It is the view of POSCO that each of these potential other causes need to be carefully and thoroughly considered by Customs, rather than merely accepting that the alleged one year financial loss by BSL represents sufficient evidence of material injury to warrant the imposition of measures.

For these purposes, POSCO shares the same views as those contained in the various submissions maintained on the Public File that BSL has not adequately addressed other causes of material injury and that Customs has failed to consider other causes in its Consideration Report. POSCO is of the view that a proper consideration of these alternative causes for material injury (for the one year period) will indicate that a number of previous decisions made by BSL arising from the GFC were the main cause of any alleged injury, not any alleged dumped sales.

6.7 Quality Issues with BSL's HRCS

At this point, POSCO wishes to draw attention to the various submissions that make reference to the lack of quality regarding BSL's HRCS. The AD Coote Submission alleges that the quality of BSL's HRCS is not the same as the imported products. A.D. Coote & Co. states that it used BSL's HRCS for many years and reached a point where it had to return the products due to quality problems. A.D. Coote & Co. states it has never had to return the imported HRCS products due to quality.

Further, the Toyota Submission, the Toyota Tsusho Submission, the Steel Association Submission and the Ford Submission all refer to the fact that BSL does not produce certain HRCS products for the automotive industry that are equivalent to imported HRCS products. These various submissions identify that BSL cannot produce HRCS products that have an equivalent grade to those produced by overseas manufacturers, such as POSCO. As a result, BSL's products do not meet the dimensional and product grade requirements of the automotive industry.

Moreover, POSCO notes the comments of SK Steel as outlined in the SK Steel Visit Report. SK Steel has stated that:

- (a) POSCO has one of the best high strength elongation grades;
- (b) when making base plates for rock bolts, the failure rate was reduced from 15% to zero when using POSCO's HRCS;
- (c) BSL's automotive grades do not meet the international specifications of some automotive manufacturers;
- (d) POSCO can currently roll grade SS540 HRCS to 1.4mm, whereas BSL cannot roll to less than 1.6mm; and
- (e) BSL cannot produce HRCS that is pickled but not oiled.

POSCO is of the view that the market share losses alleged by BSL are attributable to the inferior quality of its HRCS products. This is evidenced by the submissions referred to above. Accordingly, Customs should take into account the inferior quality of BSL's HRCS when undertaking an assessment of material injury.

6.8 *Inability of BSL to produce required quantities*

We are instructed by our client that [REDACTED] has advised that it dually sources HRCS from POSCO and other companies, including BSL. However, [REDACTED] has advised that in sourcing HRCS from BSL, BSL has in some circumstances advised that it cannot produce the quantities of HRCS required by [REDACTED] and BSL suggested that [REDACTED] source its HRCS order from other manufacturers of HRCS.

6.9 *Price suppression and price depression*

Although BSL alleges that it was forced to lower its selling prices to remain competitive in the market, it is the view of our client that this is not attributable to dumping practices associated with the export of HRCS from Korea. Based on the ISSB data provided by BSL in the Application, the data sourced from [REDACTED] contained in Confidential Attachment "B" and the information contained in the Exporter Questionnaire, it is clear that exports of HRCS from Korea to Australia have remained relatively stable throughout the investigation period. This suggests that BSL has suffered no material injury in regards to exports from Korea.

POSCO is also of the view that its export prices are not altered by any alleged dumping and that it is impossible for POSCO to be identified as a "price setter" in the Australian market. This is due to the fact that there are global price agreements between POSCO and [REDACTED]. Under the global price agreements, the price for HRCS is set well in advance and remains fixed for a period of time. Accordingly, it is

not possible for POSCO to alter its prices by dumping as its export prices are set subject to the terms of the global pricing agreement.

7. Application of Interim Measures

We note that BSL has sought the imposition of interim measures at the earliest possible opportunity during the Investigation.

In a number of our comments above we have referred to the fact that Customs' Investigation is at a very early stage and that there are a number of significant differences between the parties about which further information is required. Moreover, in addition to our comments in paragraph 2.2 above, POSCO is of the view that interim measures are inappropriate in this case for the following reasons:

- (a) Customs has not had the opportunity to review all the source data provided by BSL and has expressed reservations regarding the validity of that information;
- (b) Customs has not had the opportunity to source direct verified data in relation to exports and imports of HRCS;
- (c) Customs has not had the benefit of review of material from our client or from other Korean exporters;
- (d) the fact that the Australian market appears to have recovered and stabilised since the GFC, suggests that there is no need for interim measures;
- (e) the fact that the alleged material injury occurred during one (1) 12 month period only; and
- (f) the fact that there are other reasons for the alleged material injury (even if injury is found to have existed).

Our client would also like to emphasise the effect that the imposition of anti-dumping measures (whether interim or otherwise) will have on a range of our client's customers, both importers and end users alike. Anti-dumping measures will result in an increase in costs for our client's customers. In turn, these additional costs will ultimately be passed on to Australian consumers as the final purchaser of PMV.

Accordingly, our client strongly believes that there is no basis on which Customs should impose interim measures of any type. Any measures should wait until a full determination is made on all aspects of the Application, which can only be made after our client (and others) has had the full opportunity to respond. In the event that Customs determines that interim measures are appropriate, POSCO requests that it be advised in advance that interim measures are to be imposed.

8. Further Submissions

Our client would be pleased to be afforded the opportunity to provide further additional information and make further submissions to Customs as Customs sees fit. In our view, our client should be afforded the opportunity of making additional enquiries and further submissions before Customs makes any determinations or decisions regarding the imposition of measures (whether interim or otherwise).

Page 22
The Director, Operations 1
Australian Customs and Border Protection Service

Please note that this Submission is made without prejudice to any other submissions or commentary our client might make and without prejudice to any arguments which our client may seek to make in any applications for review of any type.

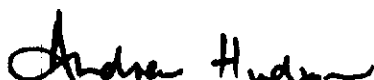
9. Conclusion and Recommendation

As discussed above, our client does not support the Application and believes the Australian Industry has not suffered material injury due to the existence of alleged dumping practices that have allegedly benefited Korea exporters. Our client requests that the Investigation be terminated in respect of HRCS exported from Korea, or at the very least, in respect of POSCO.

In our view, given the complexities of the facts and issues associated with the Investigation, together with the fact that there is an absence of direct and verified data regarding the allegations by BSL, the interests of all parties would best be served by Customs creating "Issues Papers" on the issues at hand (specifically like goods, separate market assessment, normal value, export price and material injury) and seeking commentary from the parties before advancing the Investigation and before even considering the imposition of any dumping measures (whether interim or otherwise).

Our client will be pleased to discuss the issues raised in this Submission in further detail should Customs require.

Yours faithfully
Hunt & Hunt



Andrew Hudson
Partner
D +61 3 8602 9231
E ahudson@hunthunt.com.au

Page 23
The Director, Operations 1
Australian Customs and Border Protection Service

Non-Confidential Attachment A

**Exporter Questionnaire, containing the Narrative Response and
appendixes marked "A" to "G"**

Confidential Attachment B

Import & Export Data from [REDACTED]

	2009		2010		2011		2012	
	Export	Import	Export	Import	Export	Import	Export	Import
HRCS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Plate	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cold Rolled Steel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Galvan-ised Steel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Steel Overall	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(Unit: 1,000 tonnes, \$1,000.00)

Page 25
The Director, Operations 1
Australian Customs and Border Protection Service

Confidential Attachment C

POSCO's HRCS Domestic Sales Prices