

18 January 2016

**The Director  
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Anti-Dumping Commission  
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commercial + international

By email

Dear Director

**[CONFIDENTIAL TEXT DELETED – name of client]  
Anti-circumvention inquiry concerning hollow structural sections  
Comments on expert report placed on public record**

We refer to our previous letter on behalf of our client in this matter, dated 26 November 2015.

We recognise that the specific time period of 20 days for comments in relation to Statement of Essential Facts No 291 (“SEF 291”) has passed. At the same time we note:

- the ability of the Commission to have regard to later submissions in formulating its recommendations if to do so would not prevent the timely preparation of the report to the Parliamentary Secretary (Section 269ZDBG(3) of the *Customs Act* 1901 (“the Act”) refers);
- that the Parliamentary Secretary has extended the deadline for the recommendations of the Anti-Dumping Commission (“the Commission”) to be provided to her to no later than 28 February 2016; and
- the Commission placed a report on the public record, entitled *Report for the Commission on the Effect of Boron in Steels* (“the Report”) on the public record of this inquiry on 8 January 2016, being after the specific time period of 20 days for comments in relation to the SEF.

In these circumstances our client wishes to make the following additional comments in relation to the Report and respectfully requests the Commission to take them into account in formulating its recommendations.

Our client is an importer of the subject goods, and has not entered the debate in this inquiry about technical differences between alloyed and non-alloyed HSS.<sup>1</sup> Its customers have the relevant technical understanding to be aware of those differences and to explain them in the markets concerned. However, the Report is an important document and its significance goes beyond the substantive matters that are before the Commission for decision.

In our view the Report prepared by Emeritus Professor Dunne is a well-written, well-explained and cogent document. It deals with complex issues in a scientific way that is nonetheless practical and

<sup>1</sup> The position that our client has expressed in its 26 November 2015 submission is that the “circumvention activity” is not able to be established, as a legal matter.

can be understood by the layman. It makes the case that there are strong and noticeable differences between alloy and non-alloy steels.

In that regard we note these statements in the Report in particular:

- (a) *This extraordinarily low boundary value arises from the potency of boron in increasing the hardenability of steel by suppressing the transformation of austenite to ferrite and pearlite on cooling from elevated temperatures (above about 850oC) and promoting the formation of bainitic or martensitic microstructures over lower temperature ranges. These latter transformation products significantly increase the strength and hardness at the expense of ductility. (see page 4)*
- (b) *Early CE formulae did not take into account boron, but the strong effect of B on hardenability is well recognised by the welding industry and modified formulae have been proposed to overcome this shortcoming. (see page 6)*
- (c) *Because of its strong effect on hardenability, the presence of B in steels introduces the requirement of stricter weld procedure control to avoid cracking. This issue has been pointed out repeatedly by various steel industry bodies. (see page 7)*
- (d) *Special care should therefore be exercised in welding of B-containing steels and in the selection of B-alloyed filler metals to obtain the structures and properties required for the weld metal and the HAZ. Avoidance of welding conditions that increase the susceptibility to HACC is of paramount importance. (see page 10)*
- (e) *Whether heat treated or not, the presence of boron could adversely affect the localised HAZ microstructure and properties produced as a result of welding. (see page 12)*
- (f) *As little as 0.0005% (5 ppm) of B can affect hardenability, but 0.0008% (8 ppm) is usually recognised as the boundary value (Table 1) that can produce a significant increase in hardenability. (see page 12)*
- (g) *Although alloyed structural steels exhibit markedly higher tensile strengths than non-alloyed structural steels, their formability and weldability are lower than those of non-alloyed steels. The relative importance of these sets of properties needs to be taken into account in the selection of a steel for a particular use. (see page 13)*

We drew attention to the acceptance of the fact that there are differences in the technical characteristics of boron-added steel, in our confidential email (on the subject of the confidentiality of our client's identity) dated 26 November 2015, where we quoted the following industry-sourced opinion:

*HAYDEN COOPER: Australian welders also raise a separate issue. They've discovered some Chinese steel with a high content of the chemical element boron. It's added, they say, in order for China to get around anti-dumping laws in some countries.*

*But the steel becomes brittle when welded.*

*GEOFF CRITTENDEN: What happens is: if you have high boron then you need to take special precautions when you're welding. Not a problem as long as you know.*

Source: ABC 7:30 Report, 17 November 2015. See <http://www.abc.net.au/7.30/content/2015/s4354198.htm>

Quite apart from the importance of considering Professor Dunne's report for the purposes of Regulation 48(3) (a), (b), (c) and (g) of the *Customs (International Obligations) Regulation 2015*, our client submits that the differences highlighted in his Report are pertinent factors to be taken into account in the exercise of any discretion relating to the date on which measures are imposed (if the Commission does recommend that a circumvention activity took place).

As pointed out by Professor Dunne, there are marked differences between alloyed and non-alloyed products. It flows from that that importers should not be expected to have had an understanding or an expectation that their imports of the alloyed products might one day be subjected to the imposition of the dumping duties that applied to the non-alloyed products. Whether the Commission thinks the differences explained by Professor Dunne in his Report do or do not support a finding that the circumvention activity took place is not the point here. The point is that the differences he explains do at least support the proposition that there was and has always been a real contest about the likeness of the alloyed products to the non-alloyed products. The alloyed goods have different properties to the goods that are subject to the notice, they were not subject to the notice at the time they were imported and, as we have already pointed out, they were imported during an inquiry period when the circumvention activity had not been legislatively defined and did not even exist. The respective products are different, the importers and their customers knew the products were different, and the alloyed products did not fall within the scope of the notice. During the inquiry period the importers were not aware that the importation of the goods could constitute a circumvention activity, because there was no such circumvention activity under the Act. These circumstances weigh heavily on that side of the scales that favour a decision not to backdate the imposition of dumping duties.

Although importers might continue to disagree with a decision to impose dumping duties on these different, alloyed goods, a decision only having a forward effect is something that they could accommodate in their future supply, pricing and distribution arrangements. A decision having a backward effect would constitute a penalty on them where, in all reasonableness and fairness, no penalty is called for.

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Our client maintains its trust in the Commission's fair mindedness in this matter.

Yours sincerely



**Daniel Moulis**  
Principal Partner