

4 February 2016

Mr Roman Maevsky  
Case Manager  
Operations 2  
Anti-Dumping Commission  
Level 35, 55 Collins Street  
Melbourne Victoria 3000

### Public File

Dear Mr Maevsky

### **Investigation No. 291 – Anti-Circumvention Inquiry on Hollow Structural Sections exported from China, Korea, Malaysia and Taiwan**

#### 1. Executive Summary

Austube Mills Pty Ltd (“ATM”) welcomes the expert report of Emeritus Professor Dunne that endorses ATM’s long-held stance that the addition of boron in HSS to aid increasing strength effect is only necessary for goods that will be the subject of further quenched and tempered (“Q&T”) treatment. This would result in a higher cost of the exported goods.

ATM concurs with the Commission’s finding that the addition of boron involves the slight modification of goods as per sub-regulation 48(1) and (2), and the circumvention goods have caused material injury to the Australian industry since the original measures were imposed in 2012. Consistent with the Parliamentary Secretary’s decision in Investigation No. 248, the date of effect of the amended notices should be 11 May 2015 – the date at which the investigation was commenced.

#### 2. Public File submissions

I refer to recent submissions placed on the public file including:

- Unnamed importer dated 25 November 2015;
- Dalian Steelforce Hi-Tech Co., Ltd (“Dalian Steelforce”) dated 25 November 2015;
- Dalian Steelforce and Steelforce Trading Pty Ltd (“Steelforce Trading”) dated 25 November 2015;
- Commissioned report by Emeritus Professor Druce Dunne of University of Wollongong; and
- Further submission dated 18 January 2016 by unnamed importer.

Austube Mills Pty Ltd (“ATM”) does not consider that the Anti-Dumping Commission (“the Commission”) can take account of submissions where the interested party’s name is redacted from the public file document. The acceptance of information from “unnamed sources” presents a dangerous precedent that will be exploited in future investigations.

ATM has examined the identified submissions and provides the following comments.

### 3. ADC commissioned report by Emeritus Professor Druce Dunne

ATM welcomes the report and findings of Emeritus Professor Dunne of the University of Wollongong following his analysis on the practical impacts of boron in steel products as requested by the Commission.

ATM specifically acknowledges the Emeritus Professor's findings that<sup>1</sup>:

*"For normal structural steel applications, there is little need to use a hardenable alloy steel to boost the strength level. Boron in solute form in ferrite exerts no significant strengthening effect and therefore the addition of B [boron] with no heat treatment, other than that locally imposed by welding, is likely to be counterproductive, especially if its presence is undeclared or is poorly quantified."*

and further:

*"Alloying with boron is only a valid strategy if it leads to a verifiable improvement in the properties of the steel. This is unlikely to be the case for low C [carbon] structural steels of moderate strength levels (yield strengths of 250-350 MPa), which exhibit excellent ductility and weldability. Addition of boron will not increase the strength unless a QT [quenched and tempered] type heat treatment is applied, but it is likely to increase the potential for weldment cracking by promoting the formation of martensite in the HAZ. If the dangers of B-alloying are recognised, counteractive welding procedures can be employed, but these will probably add to manufacturing costs".*

The Emeritus Professor's analysis confirms that the addition of the boron to aid increased strengthening effect would only likely occur for goods that would be the subject of further Q&T treatment. The addition of the boron in the HSS in a relative "undeclared" nature as has occurred since late 2012, is indicative that the boron was not introduced as a strength-hardening requirement of end-users on the Australian market.

As previously indicated by ATM there was no alteration in customer sentiment requiring increased strengthening for HSS goods that coincided with the emergence of increased imports of alloyed HSS. The addition of boron in HSS increases the likelihood of cracking in the weld of the pipe, and is potentially a disadvantage associated with the alloying involving boron.

ATM submits that the addition of the low cost alloy boron has not been driven by customer demand. Had the addition of boron been as a consequence of a change in customer preference, this would have been driven by a need for increased strength of the HSS. This has not been the case. Due to the low cost associated with the addition of an alloy, an opportunity identified in other jurisdictions (i.e. Europe and U.S.) to circumvent measures was viewed as opportunistic.

The attached article (Confidential Attachment 1) confirms that suppliers of steel products (including HSS) have now moved beyond the addition of boron to other elements including chromium confirming that the alloying of the goods was not undertaken on a technical basis driven by customer demand. ATM continues to request that the Commission amend the notice to include "alloys" rather than a single specific alloy, so that the anti-circumvention activities are not ongoing.

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<sup>1</sup> Refer Report for the Anti-Dumping Commission on the Effect of Boron in Steels, Emeritus Professor Druce Dunne, Section 8.

#### 4. Unnamed importer submission of 25 November 2015

This submission asserts that a slight modification of the goods exported to Australia has not occurred. It is claimed by the author that there has been no slight modification of the goods prior to exportation. This assertion is made a number of times in suggesting the Commission is incorrect in its interpretation that the circumvention goods were the subject of slight modification.

The facts in the circumstances relating to Hollow Structural Sections (“HSS”) exported from China, Korea and Malaysia speak for themselves. Prior to the imposition of interim measures in mid 2012, the volumes of imported “alloyed” HSS were minimal. Following the imposition of the measures, a significant upsurge in imports of alloyed HSS from China, Korea and Malaysia was observed. The imported “alloyed” HSS was sold and distributed in the same end-use applications as the non-alloyed HSS, via the same distribution channels and via the same importers of non-alloy HSS. The reduction in volumes of imported non-alloy HSS from China, Korea and Malaysia to an increase in imported alloy HSS from these countries evidences a motivation driven by the lower import cost associated with the alloyed HSS (i.e. an absence of interim dumping duties).

The importer has been unable to demonstrate a market change in the end-users requirements necessitating imports of alloyed HSS has occurred. In the absence of such a change, combined with the motivation of securing alloyed HSS at a lower delivered-into-store-price for the end-user (due to the non-payment of dumping and, where applicable, countervailing interim duties), it must be concluded that the slight modification of the goods to incorporate an alloy (i.e. boron) was intended to secure the circumvention of the interim duties.

It is also submitted on behalf of the unnamed importer that should the Commission find that positively that the circumvention goods were slightly modified, the Minister should not backdate the measures to apply from the date of the application for a circumvention inquiry.

The Commission is aware that ATM has sought resolution of the circumvention activities associated with the slight modification of the goods since November 2013. ATM further recognises that the effective date of the new Sub-regulations 48(1) and (2) is 1 April 2015. ATM has endured price undercutting from the circumvention goods since the circumvention activity emerged in late 2012. Consistent with the Parliamentary Secretary’s acceptance of the Commission’s recommendation in anti-circumvention inquiry No. 248, ATM recommends that the Commission nominate in its final report to the Parliamentary Secretary an effective date for the collection of interim measures on the circumvention goods of 11 May 2015.

ATM does not consider that the argument presented on behalf of the importer that the Parliamentary Secretary cannot find that a circumvention activity occurred prior to 1 April 2015 is valid. The anti-circumvention activity has unquestionably occurred prior to 1 April 2015 (indeed, since the measures were imposed in mid-2012) however, the Parliamentary Secretary is prevented from applying a remedy to earlier circumvention activities that preceded the date of the commencement of the new regulations.

#### 5. Dalian Steelforce submission of 25 November 2015

The submission on behalf of Dalian Steelforce raises the same grounds opposing a positive finding as to a circumvention activity (i.e. slight modification of the exported goods) also contends that no circumvention activity occurred prior to 1 April 2015 (when the new slight modification sub-regulation was introduced), and concludes that no backdating of the amended notices should apply.

As the arguments presented by Dalian Steelforce are similar to those by the unnamed importer, ATM does not consider it necessary to repeat its comments identified above.

Dalian Steelforce contends that the sourcing of alloyed hot rolled coil (“HRC”) does not amount to a circumvention activity. ATM disagrees with this suggestion. The circumvention activity involves the slight modification of the exported goods, achieved in this instance, via the replacement of non-alloy HRC with alloyed HRC. The use of alloyed HRC is correctly identifiable as a circumvention activity in accordance with the sub-regulations 48(1) and (2).

#### 6. Dalian Steelforce and Steelforce Trading submission of 25 November 2015

This submission on behalf of both Dalian Steelforce and Steelforce Trading replicates the arguments put forward in the Moulis Legal submission on behalf of Dalian Steelforce. These claims were:

- there has been no slight modification of the goods;
  - there can be no finding that the relevant circumvention activity has occurred prior to 1 April 2015;
- and
- the proposed amended notices should not be applied retroactively.

ATM has commented on each of these matters above.

#### 7. Unnamed importer submission dated 18 January 2016

This submission is seeking to suggest that there are in fact technical differences between imported non-alloy and alloyed HSS that are “technical characteristics” that purportedly support an argument that the addition of boron in imported HSS was a customer driven requirement.

This is not the case.

The apparent differences alluded to in the unnamed importer’s submission were not communicated as a market requirement at the time of initial introduction. Rather, the marketing focus was the non-liability for interim measures due to the classification of the goods as an “alloyed” product. It is only now following an investigation of the anti-circumvention activities that it is claimed that sufficient, justifiable differences exist (which they do not) between non-alloyed and alloy HSS.

The submission then reverts to earlier representations that any recommendation by the Commission to the Parliamentary Secretary should not be backdated and only have a “forward effect” due to the financial penalty associated with retrospective measures. ATM rejects this point of view as it fails to take full account of the Minister’s intention when applying the interim measures in mid 2012 to remedy the unfair pricing associated with the dumped (and subsidised) HSS imports.

ATM again acknowledges that the sub-regulations defining slight modification as a circumvention activity were only introduced from 1 April 2015. An application was made for a circumvention inquiry into slightly modified HSS imports from the nominated countries on 7 April 2015. Consistent with the findings in anti-circumvention inquiry No. 248, ATM requests the Commission to recommend to the Parliamentary Secretary that the revised notices take effect from 11 May 2015 – the date of commencement of the anti-circumvention inquiry.

#### 8. Conclusion

The submissions made on behalf of interested parties in Investigation No. 291 have not evidenced any reasonable justification for the addition of boron in HSS on any technical grounds. Emeritus Professor Dunne’s expert opinion confirms that the addition of the boron in relatively minor amounts provides no quantifiable benefit to typical HSS grades with yield strengths of 250 and 350 MPa.

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It is without doubt that the motivation associated with the addition of boron in imported HSS was to achieve the outcomes as evidenced in other jurisdictions administering anti-dumping (and countervailing) measures. That is, the inclusion of the alloy boron was intended to alter the tariff classification of the goods resulting in the reclassification to a sub-heading to which the Commission considers measures did not apply. Throughout this period of circumvention, the Australian industry manufacturing HSS has sustained ongoing material injury as the selling prices of alloyed HSS undercut the Australian industry's selling prices.

ATM welcomes the findings contained in Statement of Essential Facts No. 291 that a circumvention activity has occurred with the addition of boron in imported HSS from China, Korea and Malaysia. ATM requests the Commission to recommend to the Parliamentary Secretary that the notices be varied and applied to the circumvention goods with an operative date of 11 May 2015.

If you have any further questions concerning this letter please do not hesitate to contact me on (07) 3909 6130 or ATM's adviser Mr John O'Connor on (07) 3342 1921.

Yours sincerely

A handwritten signature in black ink, appearing to read "B Willcox", with a long, sweeping horizontal stroke extending to the right.

Brett Willcox  
Manager – Strategy and Business Planning