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15 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: 9553950

By email: itrops1@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 Hyundai Steel Company**

NON-CONFIDENTIAL

We act on behalf of Hyundai Steel Company ("**Hyundai Steel**").

We have been instructed by Hyundai Steel 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.

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) "**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.
- (e) "**Australian Industry**" has the same meaning as in the Application and in the Consideration Report.
- (f) "**BSL**" means BlueScope Steel Limited, being the applicant in the Application.
- (g) "**BSL Visit Report**" means the Visit Report of the Australian Industry issued by Customs in June 2012 and held on the Public File.
- (h) "**CIF**" means CIF according to INCOTERMS.

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- (i) "**Consideration Report**" means Consideration Report Number 188 issued by Customs in response to the Application dated 14 June 2012.
- (j) "**Customs**" means the Australian Customs and Border Protection Service.
- (k) "**Exporter Questionnaire**" means the confidential exporter questionnaire and the various appendices submitted by Hyundai Steel and contained in Confidential Attachment "A".
- (l) "**FIS**" means delivered free into store.
- (m) "**FOB**" means free on board.
- (n) "**Ford**" means Ford Motor Corporation of Australia Limited.
- (o) "**Ford Submission**" means the submission made by Ford dated 2 August 2012 and held on the Public File.
- (p) "**GFC**" means the Global Financial Crisis.
- (q) "**GUC**" means goods under consideration as described in the Application.
- (r) "**Holden**" means GM Holden Limited.
- (s) "**Holden Submission**" means the submissions made by Hunt & Hunt Lawyers on behalf of Holden dated 25 July 2012 and held on the Public File.
- (t) "**HRCS**" means Hot Rolled Coil Steel as described in the Application and the Consideration Report.
- (u) "**Hyundai Steel**" means Hyundai Steel Company.
- (v) "**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".
- (w) "**Investigation**" means the investigation by Customs in response to the Application.
- (x) "**ISSB**" means ISSB Limited.
- (y) "**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.
- (z) "**Korea**" means the Republic of Korea.
- (aa) "**Minister**" means the Minister for Home Affairs.
- (bb) "**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.
- (cc) "**PMV**" means passenger motor vehicle.
- (dd) "**PRC**" means the People's Republic of China.
- (ee) "**Public File**" means the electronic public file maintained by Customs in relation to the Investigation.

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- (ff) "WTO" means the World Trade Organisation.
- (gg) "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. Hyundai Steel

As stated above, we act on behalf of Hyundai Steel.

2.1 *The business of Hyundai Steel*

The history of Hyundai Steel dates back to 1953 when it was established as Korea Heavy Industry Corporation at the end of the Korean War to contribute to infrastructure restoration projects. Today, Hyundai Steel is on its way to becoming a top global steel manufacturer and continues to be at the forefront of the Korean steel industry.

Hyundai Steel has its headquarters in Seoul, with steelwork factories located in Incheon, Pohang and Dangjin. The Dangjin factory was completed in 2010 and has 2 blast furnaces and the world's first enclosed raw material processing system, which was installed as part of Hyundai Steel's commitment to making the factory a "world-class eco-friendly steelworks". Hyundai Steel produces a full range of quality steel products at these mills, including hot coils for the automotive industry and plates for vessels. HRCS is only produced at the Dagjin factory. Hyundai Steel's products are sold in Korea and exported throughout the world, including to Australia.

Further details of the operations of Hyundai Steel can be found at its website at www.hyundai-steel.com.

2.2 Potential effect of the application of measures on Hyundai Steel

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. 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. It will be Hyundai Steel's customers that will have to bear the brunt of the financial costs associated with any anti-dumping measures, as Hyundai Steel will be forced to raise its price in an attempt to recover any duties paid. [REDACTED] onto Australian consumers [REDACTED].

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.

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2.3 Hyundai Steel's export of HRCS

In the course of its business, Hyundai Steel exports HRCS from Korea. In regards to exports of HRCS to Australia, Hyundai Steel has [REDACTED]. Hyundai Steel sells HRCS to its Australian customers [REDACTED].

For these purposes, our client can identify that it has sold HRCS for export to Australia during the period under consideration. As Hyundai Steel is not related to any of its Australian customers, or its trading company Hyundai Steel 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.

2.4 Ordering of HRCS from Hyundai Steel

Details of the methodology adopted for the channels of distribution referred to in paragraph 2.3 are as follows:

[REDACTED]

In general, HRCS sales made [REDACTED]

[REDACTED]

(b) Channel 2: [REDACTED]

For exports sales of HRCS from Hyundai Steel to [REDACTED]. As the goods are exported on [REDACTED]

[REDACTED]

Hyundai Steel is able to provide further detail on these processes at the verification visit should Customs require. However it should be noted that [REDACTED]

[REDACTED]

2.5 Submission only in relation to Korea

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

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3. An Interested Party

Based on the above, we are of the view that Hyundai Steel 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.

4. Exporter Questionnaire

We now attach a confidential version of the Exporter Questionnaire which has been completed on behalf of our client at Confidential Attachment "A". This is comprised of the narrative response to the Exporter Questionnaire together with a variety of attachments. 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

(a) Arms length transactions

As mentioned above, Hyundai Steel 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 Hyundai Steel, 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 Hyundai Steel, less any relevant adjustments.

(b) Documentation for export sales

[REDACTED]

4.2 Calculation of normal value

In regards to the calculation of the normal value of the goods exported by Hyundai Steel 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 Hyundai Steel's domestic sales. Hyundai Steel 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. For these purposes, Hyundai Steel has provided copies of documentation [REDACTED]

[REDACTED]

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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 section 269TACB(2)(a) of the Act. Our client also requests that dumping margins should be calculated in US dollars as this is the trade currency used for export purposes by Hyundai.

5. General Approach of Hyundai Steel 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 HRCS 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. Hyundai Steel 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.

Hyundai Steel is entirely supportive of Customs' conclusion in the BSL Visit Report. Hyundai Steel is of the view that imports from these other countries and their effect on the Australian Industry should be further assessed. Hyundai Steel 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, Hyundai Steel makes reference to the fact that exports of HRCS from the PRC and India 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, Hyundai Steel is concerned as to the basis on which BSL has selectively excluded exports from the PRC and India from the Investigation. In the view of Hyundai Steel, exports from those countries are directly relevant to the issues of alleged material injury caused by the alleged dumping.

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Hyundai Steel notes that according to the ISSB data, the imports from "other countries" comprise almost a quarter of the total imports to Australia during 2011/2012 (at 22.4%). Given that imports from these "other countries" are relatively high, it is not appropriate for Customs to proceed with the Investigation without verifying the exports from the PRC and India. 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 these countries.

6.2 **Concerns regarding the data provided by the Applicant**

(a) **BSL's data source**

Hyundai Steel 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

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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, Hyundai Steel 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, Hyundai Steel 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 limiting the effect of the comments in the preceding paragraph regarding the production of the ISSB report sourced by BSL, Hyundai Steel 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, Hyundai Steel 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 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, Hyundai Steel states as follows:

- (1) [REDACTED]
- (2) BSL does not have the equipment necessary to roll HRCS to a grade thinner than 1.5mm; and
- (3) Hyundai Steel produces HRCS that has [REDACTED] than the HRCS manufactured by BSL.

6.4 Separate assessment of markets

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

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- (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. Furthermore, the Holden Submission also references the fact that a separate market assessment is appropriate in the Investigation. In our view, we believe that the Nippon Steel Submissions and the Holden Submission 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.

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, Hyundai Steel 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. Our client also points to the article in The Australian Financial Review on 13 August 2012 (at page 3) in which there is reference to the failure of BSL to secure additional sales to the manufacturing sector arising from the effect of the appreciating Australian dollar which has caused customers to buy more imported product.

6.5 Calculation of export price, normal value and dumping margins

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:

- (a) a non-confidential version of the ISSB data has not been provided;
- (b) the Applicant has not provided the basis on which ISSB was instructed to provide its report;
- (c) there are other proprietary providers of such information; and
- (d) 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

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will produce different and more accurate results to those provided by BSL in the Application.

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. Hyundai Steel 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; and
- (c) Customs has not had the benefit of review of material from our client or from other Korean exporters.

In addition, Hyundai Steel does not consider that interim measures are warranted in the Investigation on the basis of the following:

- (a) the Australian market appears to have recovered and stabilised since the GFC, suggesting that there is no need for interim measures;
- (b) the alleged material injury occurred during one (1) 12 month period only following the GFC; and
- (c) that there are other reasons for the alleged material injury (even if injury is found to have existed).

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, Hyundai Steel 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).

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

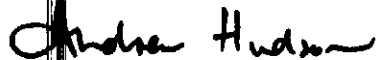
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As discussed above, our client does not support the Application and believes the Australian Industry has not suffered material injury due to the existence of alleged dumping practices that have allegedly benefited Korean exporters. Our client requests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

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



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