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Ms A Stone
A/g Manager, Operations 3
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Customs House
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commercialinternational

By email

Dear Andrea

Dalian Steelforce Hi-Tech Co., Ltd.
No dumping, no actionable subsidies – no PAD on its HSS exports

We refer to the email from the Australian Customs and Border Protection Service ("Australian Customs") to interested parties dated 23 November 2011.

1 Australian Customs notification about the timing of a possible PAD

That email canvassed the topic of a possible preliminary affirmative determination ("PAD") in this current investigation ("the Investigation") concerning hollow structural sections ("HSS") under Section 269TD(1)(a) of the *Customs Act 1901* ("the Act").

As you will recall, from the discussions that took place during the importer verification at Steelforce Trading Pty Limited ("Steelforce Trading") on 10 November 2011, we strongly submit that there can be no grounds whatsoever for Australian Customs to arrive at a PAD in relation to HSS exported to Australia by Dalian Steelforce Hi-Tech Co. Ltd. ("Dalian Steelforce").

2 Dalian Steelforce's opposition to a PAD against its exports

A PAD against Dalian Steelforce would be a matter of great concern and disquiet to our client's organisation and to ourselves. Our client insists that it not be subject to such a provisional measure. A PAD – in the form of a documentary security - is not simply an administrative matter that has little effect on an importer. The fact that no duty would actually be payable unless and until interim duties were to be imposed on an exporter, and the prospect that the outcome might be that no interim duties are imposed at all, cannot deflect the seriousness with which a PAD must be approached by Australian Customs, and the seriousness of its prospective business effect upon an exporter that becomes subject to it.

A PAD involves the Chief Executive Officer of Australian Customs ("the CEO") arriving at a preliminary conclusion:

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- (a) *that there appears to be sufficient grounds for the publication of [an interim dumping duty or countervailing] notice; or*
- (b) *that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia [of the goods under investigation]*

The publication of a PAD and the imposition of provisional measures is based on a preliminary finding that an exporter is considered to have engaged in dumping (and that the dumping will continue), or that it has materially benefited from a subsidy, as the case may be, and that by reason of that dumping or subsidisation the exporter has materially injured the Australian industry concerned.

The first reason for Dalian Steelforce's level of concern about a PAD is that there are no grounds for one to be made against it.

A PAD against Dalian Steelforce for dumping cannot be made because Dalian Steelforce has not engaged in dumping. It is in a unique position amongst Chinese exporters of HSS. Dalian Steelforce is a production platform for exports of HSS which is purposely manufactured for the Australian and the New Zealand markets. It has no sales force to speak of and only makes trader level sales to the importer, Steelforce Trading. It has no or no relevant domestic sales in China. As long as it earns, on its Australian export sales, more than a minimal "trader" profit in China – which it does – it cannot be engaged in dumping.

A PAD against Dalian Steelforce for subsidisation cannot be made because Dalian Steelforce has not benefitted from any actionable subsidies. Those it has advised to Australian Customs in its Exporter Questionnaire response constitute, at most, [CONFIDENTIAL TEXT DELETED] of the value of its gross production during the POI.¹ There is no alleged program on the part of the Government of China for public bodies to provide HRC at less than adequate remuneration. Dalian Steelforce has never heard of such a program and finds that idea to be absurd.

Dalian Steelforce is a wholly owned foreign enterprise in China. It is 100% Australian owned. It has already – unfairly in our view – suffered the opprobrium of being labelled as a "dumper" of HSS, and does not intend to let that happen again. It was subject to an undertaking for 3 years, and to intensive reporting requirements as part of the monitoring of that undertaking. Through that unfortunate and unmerited experience Dalian Steelforce carefully studied its costs and prices in order to ensure that it would not find itself in the same situation again. It developed a model, based on the monthly reporting regime required by the undertaking, to ensure it would observe its undertaking price and not engage in dumping. It continued to use that model after the previous dumping measures were revoked.

A PAD against Dalian Steelforce would confound all of its calculations, and the care it has taken to maintain a competitive position in the Australian market while still observing the fully-absorbed costing rules of margin calculation.

The second reason for Dalian Steelforce's level of concern about a possible PAD (not that it

¹ [CONFIDENTIAL TEXT DELETED]

needs to have another, if there are no grounds for one) is the very great financial strain and commercial uncertainty that such a provisional measure would place on the Steelforce organisation generally, and on the Australian customers that it services. A PAD in the form of a prospective dumping or countervailing duty would introduce an increasing contingency into the accounts of the importer. This would create severe pricing uncertainty and market disruption. We wish to place the CEO on notice that a PAD which requires Steelforce Trading to provide documentary securities would seriously damage the business of the Steelforce organisation and of its customers.

Dalian Steelforce believes it will not be in that position – because the grounds to impose such provisional measures do not exist. This letter is intended to reiterate its position.

3 The evidence before Australian Customs

It would be wrong and unreasonable for a PAD to be arrived at, and for provisional measures to be imposed against Dalian Steelforce, on the information presently before Customs.

On the one hand, Australian Customs has the benefit of the accurate and comprehensive response of Dalian Steelforce to the Exporters Questionnaire. As we will soon further explain, it indicates that there has been no dumping, and that our client has not benefited from any actionable subsidies.

On the other hand, Australian Customs has the application lodged by OneSteel Australian Tube Mills (“ATM”) which led to the initiation of this investigation. This was essentially a verbatim copy of a previous application submitted in November 2008. The allegation of dumping by Chinese exporters in the application is based in *“a domestic market price for HRC sold in Japan adjusted for a conversion cost and appropriate amounts for selling and general administration [sic.] expenses, and profit”*. The conversion cost was actually ATM’s own Australian conversion cost. The “profit” used by ATM was 5%, which the application claims is based in a SinoTrust report indicating net profit of only 2.23%. These are made up numbers.

It is, we would think, impossible to argue against the proposition that the information provided by Dalian Steelforce is to be preferred.

4 Dalian Steelforce has not been dumping

Dalian Steelforce is a manufacturer and exporter of the subject HSS operating in Liaoning Province in China. Dalian Steelforce was established in 2005 for the purpose of manufacturing steel products for sale to Steelforce Trading. Dalian Steelforce became operative in 2006. The primary reason that Dalian Steelforce was set up was because the Australian industry refused to supply product directly to Steelforce.

Dalian Steelforce does not sell HSS in commercial quantities in the domestic Chinese market. In situations where there is an absence or low volume of like goods sold by an exporter in its domestic market, Section 269TAC(2) of the Act allows for the construction of a normal value, based on a “cost to make and sell” which is equated to a hypothetical sale in the domestic market.

In its Exporter Questionnaire response, Dalian Steelforce has submitted detailed cost to make

and sell data. This data is part of a wider template for cost reporting that Dalian Steelforce developed for the purposes of ensuring compliance with the undertaking it gave to the Minister arising from a previous (2007) investigation concerning HSS from China. The template was agreed with Australian Customs for monitoring such compliance. It provides accurate and sufficient information for determining a relevant normal value under Section 269TAC(2), and for comparing it with the export prices to Australia.

At this time our client has not exposed the full model to Australian Customs. The format of the responses required by the Exporter Questionnaire are not the same as the format of the model. Nonetheless it can be fully demonstrated at the exporter verification.

The information presented in the Exporter Questionnaire can be summarised as follows:

[CONFIDENTIAL TEXT DELETED]

In simple terms, the "no dumping margin" shown in the table needs to exceed the level of an assumed profit by a manufacturer in a sale to a trader in China, in order that Dalian Steelforce not be found to have engaged in actionable "dumping". [CONFIDENTIAL TEXT DELETED] Thus the percentage degrees of difference shown in the table above are adequate to cater for an appropriate profit uplift.

Based on these figures, we submit that it is apparent that Dalian Steelforce did not engage in dumping during the POI.

5 Dalian Steelforce has not benefited from actionable subsidies

In its Exporter Questionnaire response, and in its recent corrective letter, Dalian Steelforce advises Australian Customs of the receipt of these subsidies:

[CONFIDENTIAL TEXT DELETED]

[CONFIDENTIAL TEXT DELETED]. This is plainly *de minimis* on any measure.

In the recent investigation concerning aluminium extrusions from China, the finding of an alleged equivalent program to Program 20 (referred to in the aluminium extrusions investigation as "Program 15") was instrumental in enabling Australian Customs to recommend to the Minister:

- that State-owned enterprises ("SOEs") were "public bodies" supplying a subsidy to aluminium extruders in the form of aluminium supplied at a remuneration which was less than what Australian Customs believed was "adequate"; and

- that the cost of aluminium in the Chinese market did not represent a "reasonably competitive market cost" for dumping calculation purposes.

In each case Australian Customs adopted a London Metal Exchange price as the benchmark. In the case of the subsidy finding, the LME price was used to determine the alleged benefit. In the case of the dumping finding, the LME price was substituted for the cost of aluminium in the financial accounts of the aluminium extruders.

The existence of Program 15 was based on the assumption that all suppliers of primary aluminium were SOEs, and that all SOEs were vested with governmental authority and could thereby be constituted as "public bodies". With respect, we believe that this outcome was unsupportable. Dalian Steelforce fully supports the submissions made by the Government of China ("the GOC") in its letter to Australian Customs dated 19 November 2011 on the subject of Program 15 and, in this investigation, Program 20.

Specifically, in relation to the alleged Program 20, Dalian Steelforce would state that throughout its dealings with its suppliers, it has never seen any evidence of the carrying out of any form of governmental function. Nor has Steelforce Australia noticed any major discrepancies in prices quoted by SOE suppliers as compared to non-SOE suppliers.

All of the SOEs with whom Dalian Steelforce has done business are highly commercial and profit-focussed organisations. But even if that were not the case, it must be remembered that an intrinsic part of any finding that a public body has provided a subsidy in the form of supply of goods at less than adequate remuneration is exactly that – *that a supply took place at less than adequate remuneration*. This is not a question about benefit. It is a condition that applies to the determination that the activity concerned is a subsidy, before the question of measuring any benefit comes into question.

In that regard there is no actual concrete evidence that HRC has been provided at less than adequate remuneration to Dalian Steelforce. The remuneration that Dalian Steelforce has paid to its suppliers of HRC has definitely been adequate.

Additionally, we would note, as shown in the GOC's letter of 19 November 2011, that Chinese prices of HRC have at all times throughout the POI been in line with those of one or another of a number of other countries and markets.² Therefore, even if the Chinese domestic HRC price was itself objectively not "adequate" (which is not the case) such that the existence of Program 20 could be established in the first place, no benefit could be established.³

6 In any event, there is no material injury caused by "dumping" or "subsidisation"

The following submissions are without any prejudice whatsoever to the preceding submissions, which of themselves demonstrate that a PAD cannot be imposed against Dalian Steelforce's

² Dalian Steelforce subscribes to the same source of information as that used for the table in the GOC's letter. All those prices include the variables of taxation and profitability of each of the countries concerned. For example, the standard rate of VAT in Turkey is 18%

³ This is not to say that Dalian Steelforce agrees that an cut-of-country benchmark is appropriate. In Dalian Steelforce's view such a benchmark is not permitted for measuring "benefit" under Australian law

exports to Australia.

During its importer verification, Steelforce Trading explained its opinion that the price for HSS in the Australian market is currently depressed, and has been since the global financial crisis. The main reason for this is that the market for HSS has been significantly impacted by the offshore sourcing of fabricated steel products. Such products are outside the scope of this investigation. These fabricated products are a cheaper alternative in construction projects in the building industry, which has been heavily subdued since the GFC. There is no applicable Australian Standard for such products. In many cases fabricated "ready to use" products are assembled from cheap, low-grade HSS overseas, and are then imported into Australia, bypassing the need for Australian fabricators to use the more expensive Australian Standard compliant HSS within Australia.

Steelforce does not believe that the "evidence" put forward in the application by ATM is capable of establishing that material injury is being caused by imported HSS for the purpose of any PAD. The general sentiment reflected in the submissions made by other interested parties, that the application for this investigation was an opportunistic and self-serving move on the part of ATM, is endorsed by Steelforce.

As has been pointed out in the submissions of other interested parties:

- (a) ATM did not include Vietnam in its application, as this is the one country from which it actually imports its own cheap HSS.⁴
- (b) ATM included hot-dipped galvanised pipe ("HDGP") in its application, despite the fact that ATM no longer carries out any in-house hot-dipped galvanising in Australia, but instead imports the significant majority of its HDGP requirements from Vietnam.
- (c) Steelforce endorses the comments that have been made indicating that the reason why many businesses import HSS from overseas is due to the anti-competitive behaviour of ATM.⁵ This was a motivating factor in the decision of Steelforce to establish Steelforce Dalian. Simply, Steelforce could not secure a steady and reliable source of Australian grade HSS from within Australia.
- (d) Finally Steelforce would like to echo the views that any positive dumping or subsidisation finding would gravely injure most HSS importers and would lead to severely decreased competition in the Australian market for HSS.⁶ This would be a particularly costly outcome for the already struggling construction industry, and would not be a good outcome in terms of Australia's national interest.

⁴ Adsteel Brokers submission dated 24 November 2011; Amity Pacific Pty Ltd submission dated 24 November 2011; Sanwa Pty Ltd submission dated 24 November 2011

⁵ Townsville Steel and Pipe submission dated 24 November 2011; Adsteel Brokers Pty Ltd submission dated 24 November 2011; Steel Supplies submission dated 25 November 2011

⁶ Townsville Steel and Pipe submission dated 24 November 2011; Adsteel Brokers Pty Ltd submission dated 24 November 2011; Sanwa Pty Ltd submission dated 24 November 2011; Steel Supplies submission dated 25 November 2011.

In addition to which, Steelforce would also add:

- (e) ATM has "cannibalised" the margins on their Australian Standard compliant HSS by introducing the non-Australian Standard compliant HSS line "Oztube".

On behalf of Dalian Steelforce, and in conclusion, we wish to reiterate that there are no grounds for arriving at a PAD against our client.

Dalian Steelforce has not dumped goods into the Australian market, and has not benefited from any actionable subsidies.

Despite the unfortunate position in which Australian Customs finds itself, by reason of yet another unmeritorious claim on the part of ATM, and despite the cost and concern that these investigations inflict on both Steelforce and on the wider industry, the Steelforce organisation continues to offer its full support and cooperation to Australian Customs.

Yours sincerely



Daniel Moulis
Principal