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17 September 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: [itrops1@customs.gov.au](mailto: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  
Second Submission by POSCO**

We refer to the Australian Customs and Border Protection ("**Customs**") verification visit that occurred at our client's premises between 4 and 7 September 2012.

We confirm that Customs requested that our client make this further submission in order to confirm the issues discussed at the verification visit ("**Second Submission**"). We have been instructed by POSCO to provide the following submission.

Please note that POSCO's Second Submission must be read in conjunction with the submission of our client dated 8 August 2012 ("**First Submission**") and the Exporter Questionnaire dated the same. Please also note that the same definitions as listed in paragraph 1 of the First Submission have been adopted in the Second Submission.

**1. Executive Summary**

During the verification visit, issues relating to the material injury allegedly suffered by BSL were discussed. This submission comments on the following issues:

- (a) the evidence provided by BSL to establish that it is has suffered price suppression;
- (b) the concerns of Customs regarding the monitoring of exporters and importers in the event that separate injury assessments are undertaken for each of the three market segments; and
- (c) the appropriate methods for undertaking an assessment of material injury.

**2. Price Suppression**

BSL alleges that it was unable to increase its prices in line with the increasing costs to make and sell HRCS. During the verification visit, Customs commented that the inability of BSL to recover its costs to make and sell HRCS is evidence of price suppression.

In response to the above, our client contends that it is unreasonable for BSL to assume that it will always be able to recover its costs. There is no entitlement to recover costs in a competitive market. Furthermore, given that the market is recovering from the GFC and there is currently a worldwide reduction in demand in the steel industry, this has made it particularly difficult for

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*anyone* to recover costs. Accordingly, any assessment of price suppression must be considered within this context.

In addition, we draw attention to the fact that the BSL Application states that evidence of price suppression is particularly evident in sales in the pipe and tube market. This supports the conclusion that there should be separate injury assessments undertaken for each of the three market segments. This is discussed in more detail at paragraph 3 below.

### **3. Separate Injury Assessments for Each Market Segment**

It is POSCO's submission that Customs should undertake separate injury assessments for each of the three market segments. This will produce a more accurate reflection of the effect of any potential dumping of HRCS (which is denied) and will ensure that any material injury allegedly suffered by BSL is accurately quantified in relation to each market segment.

For example, our client contends that a separate injury assessment for each market will show 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. This is due to the fact that members of the automotive industry, including our client, are party to international global pricing agreements. The global pricing agreements set the prices for HRCS well in advance and the prices remained fixed for a period of time. As a result, the prices of HRCS exported by our client from Korea to Australia are not affected by any alleged dumping.

During the verification visit, Customs identified that it was concerned that undertaking separate market assessments would result in varying dumping duties or the exclusion of a particular market, which in turn would encourage or facilitate the circumvention of dumping duties. It is our client's submission that Customs has a number of avenues available to it in order to prevent the circumvention of dumping duties.

#### **3.1 Customs' Ability to Monitor Importers**

As mentioned above, in the case of the automotive industry, there are global pricing agreements in place that establish a set price for HRCS. Accordingly, given the existence of the global pricing agreements, Customs is able to easily identify the major importers of HRCS. Furthermore, there are not many importers of HRCS in the automotive industry. Accordingly, Customs can easily monitor the importers of HRCS. Customs would also be entitled to conduct audits of the importers to ensure that they were not attempting to avoid the payment of dumping duties.

#### **3.2 Undertakings from Importers**

In respect of the automotive industry, as the major importers of HRCS can be identified due to the existence of global pricing agreements, Customs could seek undertakings from those importers. The undertakings would seek the importers' agreement to not on-sell the imports of HRCS to others. The undertaking would be legally binding and would provide Customs with a mechanism of enforcement. A breach of the undertaking may result in the recommencement of the investigation in regards to that particular importer and may also involve the retrospective imposition of a security and duties.

#### **3.3 New Anti-Circumvention Legislation**

Finally, Customs should take into consideration the effect of the *Customs Amendments (Anti-Dumping Improvements) Bill (No. 3) 2012*, which is currently before Parliament. This Bill seeks to introduce anti-circumvention provisions into Australia's anti-dumping

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system. This is of particular relevance in the Investigation, as any exporters and importers who attempt to circumvent the dumping duties would be caught by these new legislative provisions. The new legislation would allow an inquiry to be initiated if it was alleged that exporters and importers were attempting to circumvent the dumping duties.

In light of the above comments, POSCO submits that it is inappropriate for Customs to apply measures equally to all three market segments. If measures are applied equally to all three market segments, this will have an adverse impact on the other sectors where there may be lessor injury or no injury to the Australia Industry. Accordingly, Customs must be flexible in this regard when applying measures. In addition, in the event that separate measures are applied to each market segment, Customs has many avenues available to it to monitor the exporters and importer of HRCS in order to ensure that there are no attempts to circumvent any dumping duties that are payable.

#### **4. Assessment of Material Injury**

It is POSCO's submission that the 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.

##### **4.1 Loss of Market Share**

Customs has identified in the BSL Visit Report that BSL's claims regarding loss of market share cannot be assessed until visits to other importers have been completed. In this regard, in the Material Injury Direction, 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 other words, in order to establish a loss of market share, Customs must identify and exclude from the material injury assessment other factors that may have contributed to the loss of market share allegedly suffered by BSL.

It is the view of our client that there are many other relevant injury indicators that have contributed to BSL's alleged loss of market share. These include the worldwide reduction in demand in the steel industry, the appreciation of the Australian Dollar and the losses suffered and additional expenditure incurred by BSL's as a result of an internal decision to restructure its business and reduce its export business. These factors have contributed to BSL's inability to remain competitive in the HRCS market. Accordingly, these factors must be identified by Customs and excluded from any determination of loss of market share.

##### **4.2 Isolation and Exclusion of Other Factors**

The Material Injury Direction and the policies of Customs provide that injury to the Australian Industry caused by other factors must not be attributed to dumping or subsidisation. Customs must therefore ensure that other factors that have caused injury to BSL are isolated and excluded from the assessment of material injury allegedly suffered by BSL. This will ensure an accurate assessment of the effect of any alleged dumping.

POSCO is of the opinion that in the Investigation, there are other factors which must be isolated and excluded from the assessment of material injury. These other factors include, without limitation, the GFC, the reduction in demand in the global steel industry, the appreciation of the Australian Dollar which has made exports relatively less expensive, increases in the price for electricity and raw materials and increases in iron

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ore and coal coking prices. Accordingly, it is vital that these other relevant factors are isolated and excluded from any assessment of material injury, as a failure to do so may impact on the accuracy of the assessment of material injury which has occurred as a result of any alleged dumping.

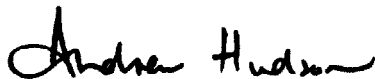
## 5. Conclusion

As discussed in the First Submission, the Second Submission and at the verification visit, our client does not support the Application and believes the Australian Industry has not suffered material injury due to the alleged dumping of HRCS exports. In particular, our client considers that a separate injury assessment for each of the three market assessments is appropriate in these circumstances. This will produce a more accurate reflection of the effect of any potential dumping of HRCS across the three market segments (which is denied) and will ensure that any material injury allegedly suffered by BSL is accurately quantified in relation to each market segment.

In the alternative, and without prejudice to any of the preceding comments, it is our client's submission that the Australian Industry has not suffered material injury due to the existence of alleged dumping practices that have allegedly benefited Korean exporters. BSL has failed to provide sufficient evidence that shows that BSL has suffered material injury as a result of dumped imports of HRCS from Korea. Accordingly, in the event that Customs applies dumping duties to all three market segments, our client requests that the Investigation be terminated in respect of HRCS exported from Korea.

Our client will be please to discuss the issues raised in the First Submission and the Second Submission in further detail should Customs require.

Yours faithfully  
**Hunt & Hunt**



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