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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: 9553950

**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 Hyundai Steel**

We refer to the Australian Customs and Border Protection ("**Customs**") verification visit that occurred at our client's premises between 4 and 6 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 Hyundai Steel to provide the following submission.

Please note that Hyundai Steel's Second Submission must be read in addition to its submission dated 15 August 2012 ("**First Submission**"). Please 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 validity of the evidence presented by BSL that allegedly demonstrates that the Australian Industry has suffered material injury;
- (b) the assessment of material injury in general, including:
  - (i) the fact that the alleged material injury occurred during one (1) 12 month period only;
  - (ii) the appropriate method for assessing of loss of market share; and
  - (iii) the isolation and exclusion of other factors attributable to injury;
- (c) the appropriate methods for undertaking an assessment of material injury in the Investigation, including:
  - (i) the appropriateness of separate injury assessments for each country and for each exporter; and

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- (ii) the appropriateness of separate injury assessments for each market segment, including addressing the concerns of Customs regarding compliance monitoring of exporters and importers in the event that separate injury assessments are undertaken for each of the three market segments.

## 2. Concerns with the Evidence Provided by BSL

### 2.1 Concerns regarding BSL's General Allegations of Injury

BSL alleges that it is has suffered material injury due to the dumping of HRCS products as follows:

- (a) price depression;
- (b) price suppression;
- (c) reduced profits;
- (d) reduced profitability;
- (e) reduced revenues;
- (f) reduced employment;
- (g) reduced wages expense; and
- (h) reduced return on investment.

In the BSL Visit Report, Customs concludes that on the basis of the information provided by BSL, BSL has suffered injury in the form of reduced profits and profitability, price depression and suppression, reduced revenue and reduced sales volumes. However, Customs notes that it was unable to identify whether loss of market share and price undercutting has occurred prior to considering the data provided by other importers. Our client is of the opinion that Customs should not make any conclusions regarding material injury suffered by BSL prior to considering all the information provided by other interested parties.

### 2.2. Concerns with the Statistics Provided by BSL

The statistics provided by BSL to demonstrate the above alleged injury are discussed in more detail below.

(a) **Index of Sales Quantities**

BSL provided the following statistics in relation to sales quantities:

Year	Australian Industry (%)	Dumped Imports (%)
2009/10	84.7	85
2010/11	90.4	135
2011/12	78.9	104.9

At the outset, we note that the statistics provided by BSL are based on "index" years. However, such an index can be misleading and Hyundai Steel believes that any statistics should set out actual quantities of sales rather than those based on an "index year" of sale quantities.

BSL alleges that the dumping occurred in 2010/2011, where BSL experienced a 7% rise in sales volumes and the alleged dumped imports experienced a 59% rise. BSL alleges that the price dumping affected its sales volumes in 2011/2012.

However, it is noted that both BSL and the alleged dumped imports experienced an increase in sales volumes in 2010/2011 after the GFC. Furthermore, both BSL and the alleged dumped imports had a reduction in sales volumes in 2011/2012, a fact that BSL has not highlighted. In fact, the allegedly dumped imports experienced a greater decrease in sales than BSL. BSL's reduction was 11.5% and the allegedly dumped imports declined by 30.1%. This point was also raised in the Nippon Steel Submissions where it was argued that these statistics support the conclusion that the decline was due to weaker demand in Australia.

In addition, the sales quantities provided by BSL (on pages 20 – 21 of the Application) may be misleading. They provide no comparison to the sale quantities of the alleged dumped imports. Consequently, although these statistics provided by BSL demonstrate a reduction in sales volumes, on the basis of the 30.1% reduction in sales volumes experienced by the alleged dumped imports, it can be assumed that the alleged dumped imports would also be able to demonstrate a reduction in sales quantities.

(b) ***Index of Production Variations (cost to make and sell)***

The figures provided by BSL indicate that it has experienced an increase in production costs each year since 2009/2010. Although BSL states that these have been adjusted to take into account the closure of the Blast Furnace and the Westernport Hot Strip Mill in 2011, they arguably do not take into account other factors, such as alterations to holdings costs, the effect of the high Australian dollar, the increase in raw material prices and the increase in iron ore and coal coking prices.

(c) ***Index of Price Variations***

It is noted that BSL's average selling price for locally produced HRCS products rose in 2010/2011 (from 76.50% to 79.26%) and declined slightly in 2011/2012 (to 77.42%). However, BSL alleges that the average cost-to-make-and-sell HRCS has increased by more than 10%. In other words, BSL alleges that the cost of producing HRCS products has risen, but its sales prices have decreased, resulting in a decrease in profitability. BSL also contends that it has had to reduce its sales prices to maintain sales volumes and market share.

In response to these statistics, it is noted that the price variations each year are only slight, around 2 – 3%. Also, as mentioned above, it would be expected that BSL's production costs would rise given the increase in the Australian dollar and the increase in raw material prices and iron ore and coal coking prices.

Moreover, a reduction in demand in the steel industry (which is clearly demonstrated by the reduced sales quantities experienced by **all** producers of HRCS), would contribute to a reduction in sales prices. Furthermore, as the alleged dumped imports sales also decreased in 2011/2012, it would be expected that the importers would also experience a reduction in price variations.

(d) **Export prices regarding HRCS Exported from Korea - Generally**

It is noted that BSL has not obtained an average of the export prices of HRCS products exported from Korea in Table B-3.1 – “Prima Facie Normal Values for HRCS steel (A\$/MT)” on page 39 of the Application. BSL merely includes the alleged prevailing domestic prices for POSCO HRCS products.

Our client contends that these statistics provided by BSL are entirely unreliable. Customs should not rely on the data provided by BSL without adequate verification of the export price based on the information provided by other Korean exporters. On this point, Hyundai Steel refers Customs to POSCO's comments on this same issue, found in POSCO's submission dated 8 August 2012 and held on the public file.

In addition, it is noted that after a comparison with its own data, Customs considers BSL's statistics to be reasonable. However, Customs identifies that when it compared BSL's domestic prices for Korea with its own data, Customs' data was significantly lower than the price provided by BSL. Customs allege that this was due to one month in which they believe the prices were incorrectly recorded. No evidence of this has been supplied for us to test the validity of Customs' statement.

BSL also alleges that the domestic value of Korean values require an uplift to take account of the inland freight included in the ISSB FOB export prices. BSL then goes on to state that the ISSB FOB prices are **likely** to include domestic and inland freight. Customs did not agree to the inclusion of an uplift, stating that the inclusion of an adjustment for inland freight would “increase the normal value and therefore any dumping margin found”. We strongly support Customs' decision not to adjust the domestic price of Korean values. It is the view of our client that the domestic price should not be altered as BSL cannot actually confirm whether the ISSB FOB prices include domestic and inland freight.

### **2.3 Concerns with the Evidence of 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 *anyone* to recover costs. Accordingly, any assessment of price suppression must be considered within this context.

In addition, our client wishes to 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. Hyundai Steel considers that 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 4.2 below.

### **3. Assessment of Material Injury in General**

#### **3.1 Period of Injury**

Hyundai Steel is of the view that it is inappropriate for Customs to proceed with the Investigation when BSL solely alleges "material injury" for its failure to secure additional sales for one financial year following losses of sales to all HRCS producers after the GFC. Hyundai Steel believes that this 12 month period is an entirely unreliable basis on which to base any assessment on material injury to the Australian Industry and impose any measures, especially taking into account the time taken to recover from the GFC and other relevant injury factors. It is the view of Hyundai Steel that alleged material injury must be assessed for a period longer than a 12 month period (in accordance with normal practice) to properly identify whether any alleged injury to the Australian Industry has been caused by the alleged dumping or is a result of other mitigating circumstances.

#### **3.2 Calculation of Loss of Market Share**

Hyundai Steel notes that 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, Hyundai Steel emphasises that 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. It is Hyundai Steel's submission that 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.

#### **3.3 Other Causes Attributable to Injury**

BSL has not provided sufficient evidence to demonstrate a decrease in sales volumes or loss of market share. BSL has only presented a profit reduction which is arguably attributable to 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. These are discussed in more detail below.

(a) ***Effect of the GFC***

Hyundai Steel contends that BSL has not fully factored in the effect of the GFC and the implications this had for the global steel market, such as a worldwide reduction in demand (including in Australia) and an increase in prices for raw materials. Hyundai Steel is therefore of the opinion that any assessment of the injury must take into consideration the full effect of the GFC and how this has affected BSL's profitability and alleged loss of market share.

Furthermore, Hyundai Steel draws attention to the fact that it is difficult for anyone to fully predict how the market will recover post GFC. Accordingly, as was raised in the Nippon Steel Submissions, it is unreasonable for BSL to assume that post GFC it will be able to recover all costs associated with production and maintain profits and profitability, especially given the recent dubious state of the global financial market.

(b) ***Effect of Other Losses and Additional Expenditure of BSL***

Hyundai Steel contends that BSL has suffered decreased profitability as a result of other losses suffered BSL and additional expenditure incurred by BSL. From the outset, it is noted that both the losses suffered by BSL and the additional expenditure incurred by BSL are a direct result of BSL's internal decision to restructure its business and to significantly reduce its export business.

Regarding other losses suffered by BSL, Hyundai Steel refers Customs to the post GFC restructuring of BSL's business in 2011. This restructuring involved a significant reduction of BSL's Australian export business, the closure of steelworks factories at Port Kembla, including the Blast Furnace and the closure of the Western Port Hot Strip Mill. It is noted that the Western Port Hot Strip Mill was specifically geared to the automotive sector, a fact identified in the Steel Association Submission.

We note that in the BSL Visit Report, Customs has identified that BSL calculated a cost per tonne for both the Port Kembla steelworks and the Western Port Hot Strip Mill and reduced the manufacturing costs in the relevant periods using those costs and the reported production volumes. Hyundai Steel agrees with Customs that it is necessary that these costs be removed so that cost trends over the injury analysis period are not distorted.

However, Hyundai Steel notes that the following costs incurred by BSL have not been adequately considered by Customs or removed from the analysis of the injury period:

- (i) the costs associated with shutting down and making safe the No. 5 blast furnace;
- (ii) the costs associated with the breaking of contracts, particularly for the supply of raw materials;
- (iii) the losses involved in the reduction of BSL's export business; and
- (iv) redundancy costs.

Our client contends that the above costs must be appropriately identified by Customs and removed from any assessment of injury in order to ensure that the material injury claimed to be suffered by the Australian Industry is in fact due to the presence of dumped imports in the market.

Regarding additional expenditure incurred by BSL, Hyundai Steel draws attention to the fact that BSL does not have the facilities at Port Kembla to pickle and oil HRCS. HRCS must be produced at Port Kembla and if the HRCS is to be pickled or oiled, it is transported to the pickling line at Western Port. BSL therefore incurs significant transportation charges, which is ultimately passed on to BSL's customers. Accordingly, this fact has contributed to BSL's inability to remain competitive in the HRCS market and is an additional factor that Customs must take into account when assessing material injury.

(c) ***Appreciation of the Australian Dollar***

Hyundai Steel contends that Customs must consider the effect that the high Australian Dollar would have had on BSL's profitability during the Investigation period. The appreciation of the Australian Dollar has made exports relatively less expensive, especially taking into account fixed prices which are set on a global basis. The appreciation of the Australian Dollar would have impacted on the ability of BSL to maintain its market share and accordingly, the costs consequences associated with this must be identified and isolated from any findings in relation to material injury.

(d) ***High Cost of Raw Materials***

Hyundai Steel is of the opinion that the significant increases in prices of raw materials over the entire injury period has contributed to BSL's alleged material injury. As mentioned in the Nippon Steel Submissions, the costs of coking coal and iron ore have increased from 30% to 70%. The Steel Association Submission also refers to the fact that the increase in the cost of raw materials has had a profitability impact of over \$1 billion Australian Dollars during and since the Investigation and has had the largest impact on BSL's profitability. Accordingly, the increase in prices for raw materials is an additional factor that must be taken into account by Customs when making an assessment of the alleged material injury to BSL.

(e) ***Losses Associated with the Reduction of BSL's Export Business***

In regards to losses associated with the reduction of BSL's export business, Hyundai Steel contends that any such losses must be adequately identified and isolated from any determination made by Customs in respect of material injury. For example, with the reduction of its export business, BSL would be faced with additional costs associated with the high cost of labour. Based on the BSL Visit Report, our client is of the opinion that these losses have not been adequately identified by either BSL or Customs. Consequently, Hyundai Steel contends that Customs must take these factors into account when determining whether material injury has occurred in order for a proper assessment to be made regarding the effects of any alleged dumping (which is denied).

It is the view of Hyundai Steel that each of these potential other causes need to be carefully and thoroughly considered by Customs, rather than merely accepting that the alleged one year financial loss by BSL represents sufficient evidence of material injury to warrant the imposition of measures. In addition, 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.

For these purposes, Hyundai Steel shares the same views as those contained in the various submissions maintained on the Public File; that BSL has not adequately addressed other causes of material injury and that Customs has failed to consider other causes in its Consideration Report. Hyundai Steel is of the view that a proper consideration of these alternative causes for material injury (for the one year period) will indicate that a number of previous decisions made by BSL arising from the GFC were the main cause of any alleged injury, not any alleged dumped sales.

#### **4. Assessment of Material Injury for the Investigation**

##### **4.1 *Separate Investigations and Injury Assessments for Each Country and Each Exporter***

Hyundai Steel is of the opinion that Customs should undertake separate injury assessments for each country and for each exporter. At this point, Hyundai Steel refers to the ISSB data provided by BSL in the Application at Table B-1.5 "Total Export Tonnes of HRCS to Australia (for years ending March)". In respect of this data, Hyundai Steel observes the following:

- (a) imports from Korea slightly decreased in 2010/2011 and only slightly increased in 2011/2012. In other words, import data for Korea has remained relatively stable;
- (b) imports from Taiwan increased dramatically in 2010/2011 (by almost double) and increased again in 2011/2012;
- (c) imports from Japan have dramatically increased in 2010/2011 (by more than 50%) and dramatically decreased in 2011/2012 (again, by more than 50%); and
- (d) imports from Malaysia have decreased in each year of the investigation period.

In our view these statistics demonstrate that any alleged dumping relates predominately to exports from Taiwan. In light of the above statistics, Hyundai Steel is of the view that a separate investigation and separate injury assessments for each country and for each exporter is warranted. This is particularly the case given that exports from Korea have remained relatively stable throughout the Investigation period, whereas exports from Taiwan have dramatically increased. Accordingly, Hyundai Steel contends that a separate investigation and separate injury assessment for each country and each exporter is necessary in order to produce an accurate reflection of BSL's loss of market share (if any). We are of the view that the adoption of this methodology will result in the termination of the Investigation in respect of Korea.



#### 4.2 ***Separate Injury Assessments for Each Market Segment***

It is Hyundai Steel'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.

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. Our client submits that Customs has a number of avenues available to it in order to prevent the circumvention of dumping duties.

##### (a) ***Customs' Ability to Monitor Importers***

Hyundai Steel contends that there are not many importers of HRCS in the automotive industry. Accordingly, it is easy for Customs to identify and track the major importers of HRCS. Customs could therefore monitor the major importers of HRCS to ensure that they are in compliance with Australia's anti-dumping system and are not attempting to circumvent the imposition of measures.

In addition, Customs is entitled to conduct audits of importers. This enables Customs to verify that importers are paying the relevant dumping duties where appropriate and are not attempting to avoid the payment dumping duties.

##### (b) ***Undertakings from Importers***

Customs could also seek undertakings from the major importers of HRCS. 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.

##### (c) ***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 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, Hyundai Steel 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 Australian 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,

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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.

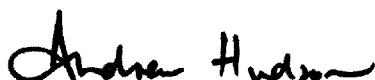
## 5. Conclusion

As discussed above and at the verification visit, Hyundai Steel 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 approach 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 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 pleased to discuss the issues raised in the Second Submission in further detail should Customs require.

Yours faithfully  
**Hunt & Hunt**



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