Level 5, 114 William Street, Melbourne VIC 3000
GPO Box 1533N, Melbourne VIC 3001 | DX 252 Melbourne
T +61 3 8602 9200 | F +61 3 8602 9299

hunt & hunt lawyers

27 January 2017

The Director – Operations 4
Anti-Dumping Commission
GPO Box 1632
MELBOURNE VIC 3001

Our ref: RXW

**By email: operations4@adcommission.gov.au**

Dear Sir/Madame

**Response to Statement of Essential Facts**

We refer to the Statement of Essential Facts dated 9 January 2017 (**SEF**) in relation to the Anti-Dumping Commission's (**ADC**) investigation into steel shelving units exported from China (**Investigation**). This document contains the response of Geelong Holdings Limited (**Geelong**) to the SEF.

In summary, Geelong agrees with the recommendation of the ADC that the Investigation be terminated without the making of a dumping or countervailing notice in respect of Geelong. However, Geelong does disagree with a number of the ADC's findings in respect of the definition of the goods under consideration, calculation of the dumping and countervailing margin and what has caused the loss suffered by Summit Select Pty Ltd (**Summit**).

Geelong's response to the SEF is set out below.

## 1. Excluded goods

### 1.1 Industrial shelving

The application in respect of the Investigation (**Application**) states that "industrial shelving" is specifically excluded from the Application.

We repeat the submissions that Geelong has previously made in respect of which goods should be considered industrial shelving.

Geelong agrees with the ADC's finding that it is reasonable to apply a load bearing capacity per shelf to the definition of industrial shelving to clarify the meaning of the term. Geelong agrees that shelving with a capacity above 200kg per shelf is industrial shelving. This is on the basis that such shelving is designed for holding weights that would not be expected in a domestic setting.

The ADC selected over 200kg as its cut off point for industrial shelving as shelves with this capacity "*are suitable for applications beyond what may be reasonably considered for 'household use' and that they compete with relatively heavy duty shelving and storage systems.*" Geelong agrees with this logic but believes that shelving with a per-shelf capacity of 100kg or over are similarly suitable for applications beyond what may be considered for household use. Geelong believes that the appropriate per weight specification for industrial shelving should be 100kg or greater.

Before the ADC adopts a limit of 200kg as the dividing point between industrial and domestic use, Geelong requests the ADC identify a domestic use of steel shelving that necessitates a per shelf weight capacity of 100kg or greater.

### 1.2 Slotted angle steel shelving

Summit set out in the Application that "slotted angle shelving" is specifically excluded from the Application.

We repeat the submissions that Geelong has previously made in respect of the definition of the term "slotted angle shelving". On page 14 of the SEF the ADC stated:

> "*The products the Commission considers to be slotted angle shelving have some type of slot in the legs or beams, are used as shelving products, but may also be suitable for a range of applications including light construction, are sold with connecting items and shelves as separate items, and in sizes and quantities as required by the customer and are not sold in kit form.*"

Geelong disagrees with the ADC's interpretation of the term slotted angle shelving. What the ADC has described in the above quotation is slotted angle **steel**. There is no doubt that slotted angle steel has a variety of uses and may not be sold with all the items needed to construct a shelve. However, Summit did not wish to exclude slotted angle steel from the Investigation. It had no need to. Slotted angle steel was not covered by the description of the goods under consideration.

The goods under consideration only covered unassembled steel framed shelving. Individual pieces of steel that could be used as a leg or a beam of a shelve (such as slotted angle steel) were clearly not covered by the description of the goods under consideration.

Additionally, the definition of the goods under consideration states that the shelves are usually pre-packed for sale in kit form, containing the majority of components required to assemble the finished unit.

Given the wording of the goods under consideration, components of shelves, such as slotted angle steel, do not need to be excluded.

Summit considered it only necessary to exclude slotted angle **shelving**. This is shelving made from slotted angle steel. For slotted angle steel to be considered slotted angle shelving, it must be sold either pre-assembled or in kit form, with all, or most, of the components necessary to construct a shelve. In the absence of this the product would not be slotted angle shelving, just slotted angle steel.

In the Application Summit described slotted angle shelving as:

> "*...shelving kits that use slotted angle steel on their structural components (beams and legs) and have shelves positioned on the slotted angle steel structure.*"

This is consistent with the view that it is the packaging of the product in kit form that differentiates slotted angle steel from slotted angle shelving.

It is contended that any shelve made from slotted angel steel is slotted angle shelving. Summit submitted in the Application that slotted angle shelving is "*steel strips with holes punched in them with a right angle bend down the middle*".

The ADC has found that slotted angle steel has no unique shape of holes and that a slotted angle shelve need only have legs or beams made from slotted angle.

It seems that the ADC considers that the differentiating feature of slotted angle steel is that it is suitable for other applications, such as light construction. It is submitted that in most cases, the steel used as legs in Geelong's boltless shelving is capable of being put to a variety of other uses, including light construction. It is simply steel strips with holes punched in it with a right angle down the middle. Geelong concedes that the rolled edged steel used on its galvanised nut and bolt shelving may not be capable of a variety of other uses. The presence of the rolled edge may limit the versatility of the steel used in this shelving.

Geelong is in the business of selling shelving and does not market or sell its shelving components for generic uses. However, the physical characteristics of its shelving legs and the uses to which they can be put, are similar to products identified as slotted angle steel by the ADC.

Given the findings the ADC has made regarding slotted angle steel in the SEF, it follows that it must find that the boltless products imported by Geelong and that all products produced by Summit are slotted angle shelving.

## 2. Implications of the definition of excluded goods

If Geelong's submissions as to the definition of slotted angle shelving are submitted, the ADC must find that there is not an Australian industry producing like goods. This is because all of the goods produced by Summit will have been excluded from the definition of goods under consideration.

If Geelong's submissions in respect of slotted angle shelving are rejected, but the submissions regarding industrial shelving are accepted, Geelong requests that the ADC reassess dumping margins and undertake a reassessment of the injury suffered by Summit excluding goods with a shelf capacity over 100 kg.

## 3. Cause of loss

Geelong is not privy to the confidential financial information concerning Summit and can only speculate as to whether it has actually suffered loss. To the extent that Summit has suffered loss, Geelong is firmly of the view the loss suffered by Summit is a result of a variety of non-price related factors. The most significant of those factors is Summit failing to adapt its galvanised steel products to the changes in consumer preferences identified by the ADC.

### 3.1 Price is not a factor

The ADC has found no evidence of price undercutting by dumped imports. Even if a different factual outcome was found, it is contended that price is not a factor in the loss suffered by Summit. In section 3.2 below, we set out a variety of non-price related factors.

Even if price was a factor, it could only be a factor amongst models with comparable characteristics. It is submitted that price is not a factor when comparing a powder coated shelf with a galvanised steel shelf. The difference in appearance and consumer demand between the two products is so significant that they do not compete on price.

The ADC has found that the galvanised and powder coated steel shelving have a physical likeness and a commercial likeness. On page 18 of the SEF the ADC supports this finding by stating that both types of shelving are sold in direct competition at the retail level within major retailers.

Geelong agrees that galvanised shelving and powder coated shelving are often sold in the same section of major retailers. However, this does not mean those goods directly compete. Also in the same section as galvanised and powder coated shelving will often be plastic, chrome and melamine shelving. Each of these types of shelving have their own market and the areas of overlap are limited.

There are a wide variety of products where characteristics such as appearance, mean that products do not compete on price, despite having similar functional characteristics and being sold in close proximity.

It is noted that galvanised steel products are often positioned as being cheaper than powder coated products. Despite this, consumer demand for galvanised steel shelving has continued to fall.

In these circumstances, the price of galvanised steel shelving versus a comparable powder coated model does not affect consumer behaviour.

Because of this, the level of any dumping or countervailing margin would need to be excessive before it could be said to have caused any injury to Summit.

[redacted] **[Discusses market share of a supplier of steel shelving that has been found not to have been dumped]**

**3.2 Non-price related factors**

(a) Demand for galvanised shelving

Geelong supports the ADC's finding that dumping did not cause the loss suffered by Summit. Geelong submits that this finding could have been made even if greater levels of dumping were found.

Geelong makes this submission as the non-price factors that caused the loss suffered by Summit were so dominant as to significantly reduce the possible effect of any dumping. The most significant non-price related factor is the shift in market preference from galvanised steel shelving to powder coated shelving. Figure 3 on page 28 of the SEF is consistent with Geelong's experience. [redacted] **[Discusses types of steel shelving in most demand by Geelong's customers]**

[redacted]. **[Discusses the ability of Geelong to produce different types of shelving]** Manufacturers with the ability to produce both galvanised steel and powder coated shelving have all moved towards a powder coated product. Other than Summit, Geelong is not aware of any steel shelving manufacturer offering an exclusively galvanised steel product range.

Summit has elected to only produce galvanised steel shelving. This has meant that it has not been able to participate in the largest and fasted growing section of the steel shelving market.

Geelong agrees with the ADC's finding on page 74 of the SEF that "...*the change in consumer preferences towards powder coated shelving has significantly reduced demand for Summit's galvanised steel shelving units*".

It is requested that the ADC investigate the extent to which Summit's share of the galvanised steel market has decreased over the alleged injury period. It is very likely that when the market is limited to the products which Summit can actually supply (galvanised steel), its share of that market will not have significantly changed. It is of course acknowledged that the size of the galvanised steel market, as a whole, has significantly reduced in the same period.

(b) Not identifying key market trends

It is submitted that a cause of the loss suffered by Summit is that it does not appear to have identified the key factors leading to growth in the steel shelving market. This inhibited its ability to capitalise on this opportunity. This is demonstrated by the following points:

- By implication, in the Application, Summit suggests it had at least a 35% market share in 2009.[1] The ADC found that the Australian industry market share was closer to 15% at the same time. It appears that Summit simply did not appreciate the ground that competitors were making in the market. Had it been more aware of this movement it may have responded by modifying its product range and being more proactive in maintaining relationships with major retailers.
- In the Application Summit contended that growth in the Australian shelving market was only caused by population growth. Geelong agrees with the ADC's finding that marketing activity, including broadening product range, increased demand for steel shelving. Summit's view that population growth was the main driver of shelving demand growth left it uniquely disadvantaged to compete against the range of innovative shelving products being exported from China.

(c) China Australia Free Trade Agreement

The ADC found that the China Australia Free Trade Agreement (**FTA**) was not a factor that contributed to the loss suffered by Summit. This was on the basis that the FTA was only implemented on 20 December 2015.

It is important to appreciate that agreement regarding the terms of the FTA was reached and announced on 17 November 2014. At this time it was suggested that the FTA would be implemented by mid-2015. In our view, from November 2014 Australia retailers would have been more reluctant to shift to an Australian or third country supplier. Australian customers would have known from November 2014 that a 5% customs tariff reduction on Chinese exports would occur in the near future.

It is accepted that the benefits of the FTA could not have been accessed until 20 December 2015. However, it is submitted that given the long term nature of supply relationships, the expected benefits of the FTA would have been taken into account from the time of the FTA's announcement in November 2014.

(d) Non-dumped imports

It is noted that the ADC found only very minor levels of dumping. Geelong agrees that the increased market share of non-dumped imports may have caused loss to Summit. However,

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[1] On page 38 of the Application Summit claims that its market share was reduced by "an additional 35% between 2009 and 2015". The ADC will have access to the confidential market share claims made by Summit in the Application and will be able to compare the extent to which Summit's own view of market share differed from that found by the ADC.

Geelong contends that this impact is not based on price. Rather, it is based on the variety of factors identified in this section.

(e) Imports of powder coated goods supplied by Stormor

Summit's related body corporate Stormor advertises powder coated shelving for sale to Australia. It is requested that the ADC consider the extent to which a commercial desire by Summit not to compete against Stormor has caused the loss suffered by Summit. From a corporate group perspective, it would not make commercial sense for Summit to establish a powder coating facility in Australia to compete against importations by its related body corporate.

(f) Use of Colorbond

Geelong is not aware of any manufacturer of steel shelving, or other steel furniture, that uses Colorbond steel as an alternative to powder coating. [redacted] **[Sets out Geelong's view as to the cost of powder coating versus using pre-painted material]**This belief is not based purely on purchase costs of the raw materials. Rather, it takes into account that a Colorbond shelve would be greatly susceptible to scratching or marking during the production process. This will:

- Increase quality control costs;
- Increase the factory product rejection rate
- Create factory product re-work costs; and
- Increase customer product return rates

By contrast, powder coating is the last process prior to packing, meaning the same issues do not arise.

It is important to appreciate that there is very little waste involved in the powder coating process. The coating which does not adhere to the steel is a powder which can be reused. By contrast, using Colorbond would be very inefficient. By necessity, under this approach, even scrap material will be Colorbond steel and constitute very expensive waste product.

Geelong agrees with the ADC's finding that it would not be economically feasible for Summit to produce steel shelving from Colorbond steel. It would also seem very unrealistic that it would do so when its related body corporate procures powder coated shelving from China.

(g) Importation of excluded goods

The ADC has identified that there is a trend towards shelving with a higher weight capacity. [redacted] **[Sets out Geelong's view as to market trends]** As the Investigation only considers goods with a per shelf capacity below 200 kg, the shift to higher weight capacity shelving will mean that Summit will have suffered a decline in the sale of the goods under consideration.

This impact would be felt particularly in respect of nut and bolt shelving which generally has a lighter capacity. [redacted] **[Sets out information regarding Geelong's product range]**

(h) Other factors

Geelong agrees with the findings of the ADC that in addition to the above mentioned factors, a variety of other factors impacted on the loss suffered by Summit.

[redacted]

[redacted]

**[Sets out Geelong's view on various non-price factors leading to its current level of sales]**

The ADC's findings are consistent with Geelong's experience that Summit does not compete with it. Geelong has not seen any evidence in the market place that Summit can provide a product and service option that makes it a viable supplier for retailers.

## 4. Calculation of dumping margin

### 4.1 Normal value – addition of profit

Geelong agrees with the finding that there are no sales of like goods by Geelong in China. In such circumstances Geelong also agrees that normal value should be calculated using the constructed value method. Given that there are no sales of like goods by Geelong, the calculation of profit must be in accordance with one of the methods available under regulation 45(3) of the *Customs (International Obligations) Regulations 2015* (**Regulations**). Briefly, these options are:

(a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export (**Method A**);

(b) by identifying the weighted average of the actual amount realised by other exporters or producers from the sale of like goods in the domestic market of the country of export (**Method B**); or

(c) by using any other reasonable method having regard to all relevant information (**Method C**).

Geelong's comments on each of the available methods are below. The methods are considered in order of Geelong's view as to their applicability.

<u>Method A</u>

In the verification visit report relating to Geelong (**Verification Report**), the ADC adopted Method A in respect of Geelong. [redacted] **[Discloses the profit margin on the**

**domestic sale of the same general category of goods]** Geelong agrees with this approach and considers that this approach is preferable to the approach adopted by the ADC in the SEF.

The ADC has positive evidence that Geelong had sales of the same general category of goods in China. There is no explanation in the SEF as to why the ADC did not use Method A to calculate the profit applicable to the Geelong constructed normal value.

We note that on page 48 of the Dumping and Subsidy Manual dated November 2015 (**Manual**) the ADC states that of the above mentioned methods, it normally seeks profit information using Method A because this information relates to the exporter being investigated and therefore is more likely to yield the required data.

It is Geelong's view that given the verified evidence regarding the domestic sale of the same general category of goods by Geelong, the profit on these sales is the most appropriate profit to be used when calculating Geelong's normal value.

<u>Method C</u>

The ADC has proposed the use of an industry benchmark to calculate the profit to be used when constructing Geelong's normal value. This is an application of Method C. It is Geelong's view that the method proposed by the ADC is less appropriate than Method A in Geelong's circumstances.

[redacted]. **[Compares profits of Geelong's exports to its domestic sales of the same general category of goods]** It is contended that this is not a reasonable approach and does not satisfy the legislative requirement of Method C (that the method used be a "reasonable method").

We also note that regulation 45(4) of the Regulations places a cap on the profit level that can be calculated under Method C. That cap is the level of profits normally realised by other exporters on domestic sales of the same general category of goods. If the ADC elects to apply <u>Method C, Geelong requests that the ADC calculate this cap and ensure that it is not exceeded.</u> [redacted] **[Discusses the level of profit on Geelong's domestic sale of the same general category of goods]**

We also note that there were no reports of other exporters having domestic sales of the same general category of goods, other than small quantities of sales of like goods by Zhongda and Guanyu Metals (as defined in the SEF).

For the above reasons, Geelong does not consider that the use of an external benchmark is appropriate. However, if a benchmark is to be used, Geelong considers that the selected benchmark should be more specific to steel shelving.

The benchmark nominated in the SEF relates to manufacturers of furniture. This would include manufacturers of furniture other than steel furniture, such as wooden furniture or furniture incorporating plastics or textiles. It would also include furniture with a strong emphasis on internal domestic use and aesthetic appearance.

It is contended that the reported profits of Chinese manufacturers of fabricated metal products is a more appropriate measure. We note that this was the index referenced by Summit in the

Application (see page 58 of the Application). It is submitted that the operating conditions, costs of raw materials and market conditions for Geelong will have greater similarities with manufacturers of fabricated metal products than manufacturers of furniture.

Geelong has calculated that the profit margin for Chinese manufacturers of fabricated metal products during the period of investigation is 5.68%. This figure is calculated by reference to publicly available profit statistics published by the National Bureau of Statistics of China referenced at footnote 25 on page 36 of the SEF.[2]

Method B

It is contended that Method B should not be used. It is noted that only 2 exporters were identified as having made domestic sales of like goods. However, the volume of those sales were such that the ADC was not satisfied that the domestic sale of those like goods could be used as the normal value for those exporters.

If the domestic sales of like goods are not of a sufficient quantity to justify the ADC using those sales for the very exporters that made the sales, it is unreasonable to use those same sales as the basis for a profit calculation affecting other exporters.

### 4.2 Normal value – substitution of steel price

In section 6.2 of the SEF the ADC set out the view that the cost of steel recorded by exporters of steel shelving do not reflect competitive market costs within the meaning of subsection 43(2) of the Regulations. Based on this finding the ADC sought to substitute HRC costs with HRC costs based on an appropriate benchmark.

(a) Absence of evidence that the Chinese cost of steel does not reflect competitive market costs

The support for this position was findings made in previous ADC investigations and an ADC report entitled *Analysis of steel and aluminium markets report to the Commissioner of the Anti-Dumping Commission.*

The ADC has not in the SEF referred to any investigation carried out, or evidence gathered, in this Investigation that justifies its decision. It is contended that the ADC has not based its decision on any specific evidence relevant to the issues under review in this Investigation.

[redacted]

[redacted]

[redacted]

[2] This rate was calculated by divided the reported profit of 2102.2 hundred million yuan by the reported revenue of 37016.7 hundred million yuan.

[redacted] **[Sets out Geelong's view as to the application of the ADC approach to materials used by Geelong]**

(b) Review should be limited to actual costs paid by Geelong

The ADC has purported to calculate a constructed normal value pursuant to section 269TAC(2)(c) of the Act. Section 269TAC2(c)(i) requires consideration of "*such amounts as the Minister determines to be the cost of production or manufacture of the goods in the country of export*".

It is contended that the terms of this section prevent the ADC from taking into account costs unrelated to the costs of producing steel shelves in China. By substituting Geelong's actual steel costs with costs determined by reference to the SBB Japan Hot Rolled Coil Index (**Japan Index**), the ADC has not calculated Geelong's cost of production in China. This criticism applies, regardless of the external benchmark selected.

It is noted that it was held in *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309 (**Steelforce Decision**) that in applying section 269TAC(2)(i) of the Act reference could be made to foreign data. However, the Steelforce Decision is currently subject to an appeal to the Full Federal Court. As set out in section 6 below, Geelong believes that the determination of this issue should be delayed until the appeal of the Steelforce Decision is decided.

(c) Appropriate benchmark

It is contended that a benchmark should be selected that most closely reflects Chinese market conditions. Due to regional proximities and similarities in the state of development of economies, it is contended that the SBB East Asia Hot Rolled Coil Index (**East Asia Index**) is an appropriate benchmark.

It is acknowledged that the East Asia Index will to some extent be influenced by the Chinese steel price. However, as China is responsible for approximately half of the world's steel production, any external index will be impacted by Chinese steel prices. It is contended that the similarities of economic conditions and markets, together with regional proximity, means the East Asia Index is an appropriate benchmark.

It is noted that in investigation 177 the ADC based its benchmark HRC price on data available from Korean, Malaysian, Taiwanese and Thai exporters. While the current Investigation did not involve the gathering of such information, a similar spread of regional Asian prices is achieved by using the East Asia Index.

If an Asian regional benchmark is not selected, Geelong agrees that it is appropriate to use an index for a country that is a significant steel manufacturer and is in the same region as China. In this respect, use of the Japan Index is reasonable. Globally, Japan is the second largest steel manufacturer behind China. The size of Japanese production means that it is best placed to resist influence from Chinese steel pricing.

Also relevant in this respect is that Japan is seen as a more consistent and high quality producer of steel than China. This enables Japan to differentiate its steel from that of China and justify different pricing.

Thirdly, Japan has a high level of domestic consumption of the steel it produces. Recently, the US Department of Commerce found that in 2016 Japan only exported 39.1% of its steel production. A strong domestic demand for Japanese steel is another factor that insulates it from the impact of Chinese pricing.

These factors, together with Japan's regional proximity to China, means that the Japan Index is a reasonable benchmark.

[redacted]. **[Discusses the method used by the ADC to adjust the Japan Index price for other types of steel]**

If contrary to the above submissions the ADC elects to use an alternative benchmark, Geelong contends that the SBB Turkey Hot Rolled Coil Index should be used. For countries outside of Asia that are significant manufacturers of steel, Turkey has market conditions that are most similar to China.

### 4.3 Impacts of substituting the steel price on normal value

Geelong does not consider that it is appropriate to substitute its actual steel costs with surrogate steel costs for the purpose of determining the normal value. However, if the ADC does take this approach, it is submitted that the only reasonable approach is to make similar adjustments to the level of profit added to the constructed normal value used to determined Geelong's dumping margin. A failure to do this will mean that the profit being added to Geelong's constructed value is based on profits earned by companies with lower costs of raw material. This is an unreasonable comparison. The profits achieved by these companies are bound to be higher than the profit that would be achieved with an uplifted steel value.

This approach will result in an artificially high constructed normal value which will be compared to an export price based on Geelong's actual costs.

## 5. Provision of steel at less than adequate remuneration

### 5.1 Was a benefit provided

The ADC has set out at section 7.5.2 of the SEF that it found that Geelong was in receipt of steel for less than adequate remuneration during the investigation period. The detail regarding this alleged subsidy is set out in appendix 4 of the SEF.

The ADC has not set out the basis for its finding that steel was provided to Geelong at less than adequate remuneration. There has been no evidence provided as to how an amount of adequate remuneration was calculated other than references benchmark steel prices discussed in appendix 1 of the SEF.

If the ADC has merely compared the price paid by Geelong to the Japanese Index this is very unlikely to produce evidence relevant to whether steel was provided to Geelong at less than adequate remuneration. The test of adequate remuneration should focus on whether the actual sale price was sufficient to cover the costs to make and sell the goods and allow for an adequate profit. That Geelong paid an amount for Chinese sourced steel that was different to the Japanese Index does not provide evidence that the Chinese suppliers did not receive adequate remuneration.

[redacted]

[redacted]

**[Discusses steel prices and Geelong's suppliers of steel]**

As a result, Geelong does not believe that it has received a subsidy in the form of raw materials at less than adequate remuneration.

### 5.2 Was any benefit specific

Even if it is found that steel was provided to Geelong at less than adequate remuneration, it is contended that the benefit provided was not sufficiently specific to be countervailable. Section 269TAAC of the *Customs Act 1901* (**Act**) sets out guidance on when a countervailable subsidy will be considered specific. The guidance provided sets out the following examples of where a subsidy will be considered specific:

- access to the subsidy is explicitly limited to a particular enterprise;
- access is limited to particular enterprises carrying on business within a designated region that is within the jurisdiction of the subsidising authority;
- the subsidy is contingent, in fact or law, and whether solely or as one or several conditions, on export performance; or
- the subsidy is contingent on the use of domestically produced or manufactured goods in preference to imported goods.

We equally note that the Minister may determine that a subsidy is specific having regard to whether the subsidy benefits, or predominately benefits, or disproportionately benefits, a limited number of enterprises or particular enterprises.

The alleged subsidy benefits all Chinese manufacturers of products that have steel as an input. This constitutes a vast variety of products and would constitute a significant proportion of Chinese manufacturing. While it is accepted that the alleged subsidy would benefit manufacturers of steel shelving, these manufacturers are not receiving a unique benefit.

When such a large proportion of the economy is automatically entitled to the benefit of an alleged subsidy, it cannot be said that the subsidy is specific within the meaning set out in section 269TAAC of the Act.

### 5.3 Ensuring that there is not a double counting of the same benefit

If the ADC finds that Geelong received a countervailable subsidy in the form of steel at less than adequate remuneration, Geelong request that the amount of the benefit is not also included in Geelong's dumping margin (should one be found). Article VI of Agreement on Subsidies and Countervailing Measures provides that:

*"No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping and export subsidisation."*

The ADC has used the difference between actual steel prices paid by Geelong and the Japanese Index as both the basis for adjusting Geelong's constructed normal value and the finding of a subsidy, being the provision of steel at less than adequate remuneration.

Adjusting Geelong's normal value by increasing the cost of raw materials leads to an increased dumping margin, or reduced negative dumping margin, as the case may be. The same situation, the price paid for steel, is used as the basis for finding that there is a countervailable benefit received by Geelong.

If Geelong is subject to both countervailing and dumping duties, this approach will mean that Geelong is subject to duties twice for same situation.

It is appreciated that the ADC believes that a domestic subsidy will not normally create a double counting problem as it assumes that the domestic subsidy will have affected domestic and export costs/prices equally. On this basis it believes that any dumping margin will be the same with or without the domestic subsidy.

This result does not follow from how the ADC has calculated the dumping margin in respect of Geelong. By uplifting the steel pricing when constructing the normal value, but not making the same adjustment to the export price (which we appreciate could not be done), the dumping margin is inflated. The extent to which the dumping margin is inflated is the difference between Geelong's actual steel price and the Japan Index.

The double counting affect could be lessened if the profit margin added to the constructed normal value took into account steel prices in accordance with the Japan Index steel prices. However, the profit margin used by the ADC is based on profits achieved by Chinese manufacturers of furniture and will be based on actual steel costs of those manufacturers.

In the unlikely event that both a dumping and countervailing margin is found, Geelong contends that the ADC should either:

- not substitute Geelong's actual steel cost with the Japan Index cost when calculating the constructed normal value as the impact of the steel price is neutral in respect of domestic sales and exports; or
- reduce any dumping margin to account for the value of the countervailing duty.

In the absence of making any of the above adjustments, and the imposition of both dumping and countervailing duties, the ADC will be imposing a duty twice on Geelong in respect of the same situation.

If no dumping duties are recommended in respect of Geelong, no adjustment is necessary as there could be no double imposition of duties.

## 6. Timing of the making of the final report

The final report is due to be provided by 23 February 2017. Geelong is aware of the appeal to the Full Federal Court of Australia (**Appeal**) that has been lodged by Steelforce Trading Pty Ltd for a review of the decision in Steelforce Decision.

An issue in the Steelforce Decision is the extent to which the ADC can use a benchmark price to determine the cost of manufacture of an exporter. The Steelforce Decision also considered the methodology that can be applied by the ADC in uplifting an exporter's actual costs by reference to a benchmark cost.

In this Investigation the ADC has elected to substitute Geelong's actual steel costs with costs determined in accordance with a benchmark steel price. Geelong has submitted that this approach is not in accordance with the Act.

It is contended that the outcome of the Appeal will be relevant to the correctness of the approach taken by the ADC in this Investigation.

If the Final Report does not contain a recommendation to impose dumping duties, the outcome of the Appeal will be irrelevant to this Investigation and there is no need to delay the provision of the final report. However, if the ADC determines that the exportation of dumped goods to Australia has caused loss to Summit, it is submitted that the release of the final report should be delayed until 28 days after the reasons for the decision in the Appeal have been provided. If the Appeal is successful, it is likely that the ADC will have to recalculate dumping margins which may impact the recommendation in the final report.

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For the reasons set out in this submission, Geelong agrees with the ADC's recommendation to terminate the Investigation. While Geelong disagrees with some elements of the ADC's findings on the definition of excluded goods and calculation of the dumping margin, this disagreement does not prevent Geelong from supporting the recommendations of the ADC as set out in the SEF.

While only low dumping and countervailing margins were found by the ADC, Geelong considers that the ADC's recommendations in the SEF were open to it even in the event that greater dumping or countervailing margins were found. In this respect, the ADC has clearly identified evidence that non-price factors have caused any loss suffered by Summit. In this respect, the shift in consumer demand from galvanised steel shelving to powder coated shelving is the most significant. There simply is very little demand for the products manufactured by Summit.

Please feel free to contact us regarding any of the issues raised in this submission.

Yours faithfully
**Hunt & Hunt**

R Wiese

**Russell Wiese**
Principal

D +61 3 8602 9231
E rwiese@huntvic.com.au