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22 October 2012

Our ref: ATH
Matter no: 9553950

The Director
Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

By Courier
and
By email: itrops1@customs.gov.au

Dear Director

Hyundai Steel Company
Investigation into alleged dumping of Hot Rolled Coil Steel exported from Japan, the Republic of Korea, Malaysia and Taiwan
Response to Statement of Essential Facts Number 188 and Preliminary Affirmative Determination Number 188
Non-Confidential Version

We refer to our previous correspondence and confirm that we act on behalf of Hyundai Steel Company (**"Hyundai"**) in this matter.

Our client has instructed us to respond to the Statement of Essential Facts No. 188 (**"SEF"**) and Preliminary Affirmative Determination No. 188 (**"PAD"**) as follows.

Please note that this is a non-confidential version and a confidential version has also been provided.

1. Our client restates its strong objection to the actions of the Australian Customs and Border Protection Service (**"Customs"**) in rejecting the original methodology (**"Original Methodology"**) and associated findings reached during the Investigation as set out in the Visitor Report issued after the verification visit to our client as to the manner to calculate normal value and export price and unilaterally substituting a new methodology (**"New Methodology"**) to establish normal value, and export values with an associated new dumping margin. That new dumping margin has increased by approximately 300% from that which had previously been determined by Customs. Not only were the actions entirely unexpected and contrary to our client's legitimate expectations, they were undertaken with little prior notice to our client and some time after investigating officers of Customs had concluded their verification visit and their Visit Report and expressed themselves satisfied with the Original Methodology.

2. Our client had reasonable and legitimate expectations to believe that the Original Methodology was correct and was to be observed and honoured by Customs as being the correct methodology. The change by Customs to the New Methodology, first notified to our client on 28 September 2012 breached our client's legitimate expectations.

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3. Our client has already produced extensive submissions as to why Customs change to the New Methodology is in error as set out in our letter of 2 October 2012 and the enclosures to that letter.

Our client has further reviewed the material that was provided with our letter of 2 October 2012. Accordingly, we now provide:

(a) Revised (and replacement) "Rebuttal Brief" (**"Rebuttal Brief"**) prepared by our client addressing both the concerns with the New Methodology and other flaws in the SEF and PAD being Non-Confidential Exhibit "A".

(b) Sheets for Non-Confidential Exhibits 1 to 8 to the Rebuttal Brief.

Each of these exhibits in their entirety are confidential as they contain confidential sales information.

(c) Computer Disc with the revised spread sheets referred to in the Rebuttal Brief being Confidential Exhibit "B". The contents of Confidential Exhibit "B" is confidential in its entirety

As Customs will see, the Rebuttal Brief and related material includes some changes to that sent with our letter of 2 October 2012. For these purposes, as Customs has [redacted] (confidential product specification information) our client withdraws its arguments [redacted] (confidential product specification information) stated in its previous Rebuttal Brief.

4. In the view of our client, the process adopted by Customs is incorrect, inequitable and contrary to our client's legitimate expectation, made without appropriate prior notice or discussion. Further our client also questions the timing adopted by Customs. For these purposes.

(a) At an early stage of the Investigation our client proposed the Original Methodology taking into account the large numbers of items produced by our client which came within the Investigation.

(b) That Original Methodology had been agreed with officers of Customs involved with the Investigation.

(c) All written submissions and subsequent correspondence and clarifications were made on the basis of the Original Methodology.

(d) The Original Methodology was adopted, discussed, agreed and applied during the verification visit by Customs to our client and in the subsequent Visit Report which was finalised on 25 September 2012.

(e) Our client only received notice on 28 September 2012 that the Original Methodology and the associated findings of the Customs investigating officers were to be disregarded. This New Methodology led to an entirely different result for our client to its significant disadvantage.

(f) Our client and ourselves provided a response to Customs' adoption of the New Methodology by our letter of 2 October 2012. The correspondence set out why the Original Methodology and findings remained correct. However,

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section 2.2.4 of the SEF points out that the correspondence was not considered in the SEF.

(g) The New Methodology was adopted by Customs in the SEF and the PAD.

In our view, these actions by Customs not only denied our client's legitimate expectation as to how to Investigation would be conducted, they also denied our client natural justice in the sense that our client only had very limited notice of the New Methodology and a very limited time to respond. Even then, the urgent response from our client was not taken into account by Customs in publishing its SEF and its PAD.

5. Even though our client responded urgently to the unexpected change to the New Methodology, it would appear that Customs had already resolved to adopt its New Methodology regardless of any submission by our client. We note from section 2.2.4 of the SEF that Customs was "unable to take into consideration and address" the submission by us on behalf of our client. The SEF suggests that it was not able to be taken into account to allow for the SEF to be placed on the public record in a timely manner. However, even given that need to act in a timely manner, Customs still found the time to totally disregard the findings of its Investigation to that point and the Original Methodology and to adopt a New Methodology, new normal values and new dumping margins in its SEF and PAD. In our view, such an approach was unreasonable and inequitable to our client.

6. Notwithstanding that Customs have observed that it will "consider" our submission in its Final Report, our client has already been substantially disadvantaged by the findings of the PAD in that importers of our client's product already have to put into place securities for the import of that product based on the New (and we believe to be incorrect) Methodology adopted by Customs.

7. The Rebuttal Brief also identifies that;

(a) Customs made a clerical [redacted] (confidential error description) error in calculating a normal value for domestic sales (which applies to both dumping margins assessed by Customs); and

(b) Customs made a clerical error in calculating a constructed value.

8. As a result of the comments above, our client believes that:

(a) the SEF is incorrect in so far as it relies on to the New Methodology to determine normal values and export prices for goods produced by our client, those values and prices which were determined and the associated dumping margins which were determined by Customs; and

(b) the SEF is incorrect due to [redacted] (confidential error description) clerical issues identified in the Rebuttal Brief and related material.

To the same effect, our client believes the PAD is incorrect.

9. As a consequence of the comments in the preceding paragraphs, our client requests that the Final Report by Customs to the Minister for Home Affairs;

(a) reinstates the use of the Original Methodology;

(b) remedies the clerical errors identified by our client;

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(c) reviews the normal values and export prices determined following the Investigation, the verification visit and the Visit Report using its Original Methodology and eliminating clerical errors;

(d) establishes a proposed dumping margins associated with the Original Methodology and corrected for clerical errors; and

(e) recommends to the Minister that;

(1) the Investigation into exports by our client be terminated given that the revised and corrected dumping margin [redacted] (confidential calculation information);

(2) the securities be removed as currently applied to exports by our client; and

(3) no further measures be put into place in respect of exports by our client.

Our client also requests a meeting with relevant officers of Customs to discuss these matters and Customs' approach to the SEF.

We look forward to hearing further from you.

Please note that these comments are made without attempt to limit any of the earlier submissions by ourselves or by our client.

Yours faithfully
Hunt & Hunt

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Non-Confidential Exhibit "A"

INVESTIGATION INTO THE ALLEGED DUMPING OF HOT ROLLED COIL

EXPORTED TO AUSTRALIA FROM JAPAN, THEREPUBLIC OF KOREA, MALAYSIA AND TAIWAN

REBUTTAL BRIEF ON THE STATEMENT OF ESSENTIAL FACTS NUMBER 188 AND PRELIMINARY AFFIRMATIVE DETERMINATION 188 FOR HYUNDAI STEEL COMPANY

NON-CONFIDENTIAL VERSION

Hyundai Steel Company's Rebuttal Brief

on the Statement of Essential Facts Number 188 Dated 3 October 2012

19 October 2012

Hyundai Steel Company (hereinafter "the Company" or "Hyundai Steel") hereby submits its rebuttal brief on the "Statement of Essential Facts Number 188 Preliminary Affirmative Determination 188" (hereinafter "the SEF") published by the Australian Customs and Border Protection Service (hereinafter "the CBP") dated 3 October 2012.

In response to the "Review of Preliminary Dumping Margins" published by "the CBP" dated 28 September 2012, "the Company" submitted its rebuttal comments on 3 October 2012. However, at the time of the submission, "the Company" did not receive a dumping margin calculation file from "the CBP", which ultimately changed the dumping margin from 1.9% to 4.5%.

After reviewing the dumping margin calculation file, "the Company" noted the followings; (confidential

[redacted] (confidential submission)

[redacted] (confidential submission regarding product classification)

[redacted] (confidential submission)

Following are "the Company's" rebuttal comments on "the SEF"

[redacted] (confidential submission)

[redacted]

(confidential file description)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] (confidential error descriptions)

[redacted]

[redacted] (confidential company information)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] (confidential error description)

[redacted] (confidential submission regarding product classification)

[redacted] (confidential product code information)

[redacted]

[redacted]

[redacted] (confidential product code information)

[redacted]

[redacted]

(3) Article 2 of the WTO Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994)

Pursuant to Article 2.1 of the WTO Agreement, it is stated

"For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country." (emphasis added)

The WTO Agreement obviously states that a product is to be considered as being dumped if the export price is less than the comparable price of the "like product". That is, it is unquestionable that the comparison between the export price and the normal value should be made for the "like product".

Also, Article 2.6 of the WTO Agreement defines the "like product" as follows;

"Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration." (emphasis added)

That is, the WTO Agreement primarily presumes that whether a certain product is the "like product" should depend on the characteristics of the "like product". Also, it can be interpreted that the characteristics relate to application and physical properties. In this regard, it is unquestionable that

"the Company's" product code hierarchy is exactly consistent with Article 2.6 of the WTO Agreement. However, "the CBP" disregarded "the Company's" product code hierarchy, simply because "no information was provided by Hyundai to demonstrate whether other factors have impacted prices." However, it should be noted that the WTO Agreement does not regulate in any Articles that the impact on prices should be considered in whether a certain product is the "like product".

Rather, as stated above, the "impact on prices" is related to "Due Allowance" for a fair comparison. In accordance with Article 2.4 of the WTO Agreement, it is stated

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability." (emphasis added)

The above Article 2.4 of the WTO Agreement clearly states that affecting price comparability is a matter of "due allowance" for a fair comparison between the export price and the normal value. Thus, whether certain factors impact on prices should be considered in due allowance for a fair comparison, not in the matter of the "like product".

Furthermore, as will be explained later, "the CBP's" statement that "no information was provided by Hyundai to demonstrate whether other factors have impacted prices." is entirely false and misleading, and consequently "the CBP's" new methodology should be withdrawn in the final determination.

[redacted]

(confidential submission)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] (confidential sales information)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] (confidential sales information)

[redacted]

[redacted]

[redacted]

(confidential submission)

[redacted]

[redacted] (confidential calculation)

[redacted]

4. Conclusion

As demonstrated above, it is evident that "Statement of Essential Facts Number 188 and Preliminary Affirmative Determination 188" published by "the CBP" dated 3 October 2012 has serious flaws because: (confidential submissions)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Therefore, "the Company" respectfully requests that "the CBP" withdraw its revised dumping margin calculation methodology and revert to the original dumping margin calculation methodology stated on the original visit report dated 24 September 2012, as early as possible.

Non-Confidential Exhibit 1 to 8

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Confidential Exhibit "B"