
HOWARD CONSULTING PTY LTD

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November 12, 2012

Mr John Bracic
Director, Operations 1
International Trade Remedies Branch
Australian Customs & Border Protection Service
5 Constitution Avenue
Canberra ACT 2601

Via email: itrops1@customs.gov.au

Dear John

**Re: SEF No 188 +
PAD No 188**

We write in response to the abovementioned findings by ITRB and in the knowledge the due date of 23 Oct 2012 has since passed.

Specifically we are writing to you in respect of our letter dated 26th September 2012 and in the expectation that your final recommendations have not yet been forwarded to the Minister.

“Export Price”

We are also writing to you because our interested parties are both confused and concerned in respect of what your final recommendations to the minister will be based, and conditioned, on.

Our affected interests have relied on there being certainty in the process rather than certainty in the outcome, and in that regard we are confused as to why the ITRB appear to ignore what we consider to be not only the real world situation but the legislative basis for determining the Export Price (AEP).

We do note, however, that SEF No 188 did state that our letter of 26th September 2012 would be taken into consideration in the “Final Report”.

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Nevertheless we remain concerned that the Final Report may maintain the apparent ITRB's status quo on determining Export Price and that as a consequence our interests are likely to be subjected to further, and unnecessary transaction costs.

Our claim is that the Export Price is the actual money price paid by the importer for the exported goods and not, as the ITRB appear to adopt, the amount accounted for by the exporter in its functional currency on its date of invoice because of its country's accounting regulations.

We are confused because one of the reasons the ITRB undertakes Importer Verification Visits is to recommend the basis for calculating the Export Price.

We are concerned because the ITRB appears to confuse what the exporter regards as being the date of sale with how the Export Price should be determined.

In our view the exporter's basis for date of sale, generally its date of invoice to the importer, is irrelevant for purposes of determining the ascertained Export Price.

We acknowledge that the relevant data for determining the actual money price paid may not always be available but in our case on this Investigation we claim that data was readily evident.

Our concern of course is that ITRB's rejection of our claim on the relevant Export Price determination will result in not only a flawed Dumping Duty Margin, but given the current global market for HRC, a consequent Floor Price (AEP) that will render our exporter being totally uncompetitive in the Australian market.

Whilst our primary concern in this instance is the determination of Export Price rather than any date of sale determination, we do claim that the real world situation in our case is that in respect of when the relevant sale takes place in the single Australian market place it is the date of confirmation of order (contract) between the importer and the exporter.

It is not the date the exporter invoices the Australian importer and our overall concern is that ITRB determinations for both Export Price and Date of Sale need to be undertaken at the Importer Visit stage of the process.

We are also confused as to why the AEP in this instance is expressed in the Australian dollars and not the currency in which the import was transacted, namely US\$ currency.

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We would be very concerned if the practice was now trending towards any undue post Verification of available data that may cause to change the initial, more favourable, outcome on Dumping Margins.

Other Matters

We are also confused as to why certain types of HRC are included in this “like goods” determination when others, seemingly, are not.

For example, HRC in “sheet form” and of a thickness of 4.75mm is not included but this product in “P&O” form is included as it is captured by a Tariff Classification Item included in the like goods determination.

Our concern in respect to this particular situation, as Bluescope now has to send HRC from “Kembla” to Westernport for the P&O process, is that Australian end-users will inevitably pay a higher price because of Bluescope’s intentional inefficiency.

We are of course aware of the Minister’s discretionary powers when considering the effects on downstream industry.

Our concern is that, and probably for the first time ever, the Minister will exercise his discretion in respect to only one downstream sector, namely the automotive sector.

Bluescope, however, has stated during this Investigation that it also supplied general manufacturing with the same grades it “once” supplied the automotive sector.

Whilst there may be more than “nine Billion” reasons to quarantine the local automotive sectors’ imports of HRC the same consideration needs to be given to other local users of HRC grades and sizes no longer produced by Bluescope but which are captured solely because of the like goods consideration being based on a Customs Tariff Classification.

As one Government member recently expressed, ministerial decisions should always be based on the public (national) interest and not to ensure the profit of a particular company, ie: Bluescope, which unlike most of the downstream Australian users of HRC, has the demonstrated market power and market share enabling ready access to Australia’s anti-dumping system.

We respectfully submit that if the SEF and PAD findings in this investigation are to be sustained they will certainly result in a further lessening of real market competition for local HRC users, being the factual local industry as distinct from the local producer of the GUC.

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The CEO of Australia's other monopoly steel producer recently stated that the local steel industry employs around 90,000 to 100,000 people.

Our understanding from industry sources is that Bluescope's employment on its "Kembla" HSM is around 400 people.

During one of the importer visits we provided ITRB with our list of what we consider to be Bluescope's now redundant grades and sizes of HRC that are captured in this Investigation.

Clearly, the challenge we have will be your taking our claims and concerns into consideration given there is now one week remaining.

Thank you for your consideration and please contact me for any clarification or further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'M J Howard', written in a cursive style.

M J Howard

**Director,
Howard Consulting P/L**

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