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Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
ACT 2609 Australia

Telephone +61 2 6163 1000
Facsimile +61 2 6162 0606
Email: info@moulislegal.com
www.moulislegal.com

Ms Joanne Reid
Director, Operations 2
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra
Australian Capital Territory 2601



commercial-international

By email

Dear Ms Reid

**Dongkuk Steel Mill Corporation and GS Global Corporation
Alleged dumping of plate steel from Korea
Adjustment implications of [CONFIDENTIAL TEXT DELETED –
characterisation of DSM re GSG's Australian sales] exporter**

This is a joint submission prepared by Daniel Moulis, as solicitor for GS Global Corporation ("GSG"), and by Charles Zhan, as solicitor for Dongkuk Steel Mill Corporation ("DSM").

A Preliminary findings in the visit reports

We refer to the visit reports of the Anti-Dumping Commission ("ADC") for DSM and GSG in this investigation ("the visit reports"), the findings of which are reflected in the Statement of Essential Facts 198 ("SEF198").

The visit reports made a preliminary finding that DSM was to be regarded as the exporter of the goods manufactured by DSM and exported to Australia by GSG. Further, the visit reports determined the "export price" of the goods to be the ex-works price charged by DSM to GSG, *not* the price charged by GSG and paid/payable for the goods by the Australian importer.

DSM and GSG reject these findings. With respect, we submit that ADC could not reasonably make such findings in light of the evidence and information that was provided by DSM and GSG both before and during the respective verification visits, and that was verified during those visits. The facts supporting the positions that:

- DSM is the manufacturer of the goods;
- GSG is the exporter in relation to the goods manufactured by DSM and sold by GSG to Australia; and
- the only appropriate export price that the Minister should determine, having regard to all the circumstances of the exportation, should be the price paid by the importer, being also the price charged by GSG for having the goods exported from Korea,

are clearly set out in:

- the Exporter Questionnaire ("EQ") responses from DSM and GSG;

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- the joint submission of DSM and GSG regarding these export-related issues dated 19 July 2013 (“the joint submission”);
- emails from ourselves to ADC dated 25 and 27 May, and 13 June, 2013; and
- the information provided by the relevant company officials to the relevant ADC officers during the verifications.

These are the primary positions of DSM and GSG, and have been the basis for the responses to the EQs and the submissions made by the two parties up until now. The contrary findings made by ADC – based on the proposition that GSG was not to be considered as the exporter – were not contemplated by either GSG or DSM in their EQ responses, and were not made known to DSM and GSG until 10 July 2013. The importance of this observation is that DSM and GSG did not have the opportunity to respond to the findings and to inform ADC of all of the consequent implications of those findings on the dumping margin calculations before receiving the final verification visit reports.

Without prejudice to the primary position of our clients – which is that GSG is truly the exporter in the circumstances of this case – we now wish to make submissions on behalf of our clients to address the contrary views adopted by ADC to date, namely that:

- DSM is the exporter of the goods sold by GSG to Australia
- the price charged by DSM to GSG is the “export price”.

We submit that the dumping margin outcome which has presently been reached in relation to DSM - without the input of DSM and GSG - is both wrong and manifestly unreasonable. The two prices that are being compared in DSM's case are not comparable. They are at completely different levels and involve completely different considerations on the part of DSM as the seller.

We respectfully submit that ADC must either adopt an alternative approach towards deciding what is the appropriate export price, or make adjustments to the existing normal values which are both obvious and necessary for the purposes of ensuring a proper and fair comparison in determining the dumping margin.

B Use of GSG's price as the export price in the circumstances of this case

We reiterate our primary position that, in any circumstances, for determining the dumping margin for the goods manufactured by DSM and exported by GSG to Australia, the export price should be the price paid by the importer. We also note that in the joint submission of DSM and GSG, we put it to ADC that in the special circumstances of this case, the export price should be GSG's invoice price to the importer as *“the price that the Minister determines having regard to all the circumstances of the exportation”* under Section 269TAB(1)(c) of the *Customs Act 1901*.

Our clients are confused and disappointed to observe that a contradictory approach to the one adopted in respect of them appears to have been adopted in respect of a different exporter in this investigation. In the Preliminary Affirmative Determination in this investigation, ADC's approach in relation to the Chinese exporter Shangdong Iron and Steel Company Limited, Jinan Company (JIGANG) was stated to be as follows:

Preliminary export prices for exports by JIGANG were established pursuant to s.269TAB(1)(c) of the Act using export prices payable by the importer, in the form of the invoice price from Jigang Hong Kong Holding Co., Limited (Jigang HK) to the Australian importer.[underlining added]

Our clients ask ADC to review its position, and to use the price paid by the importer as the export price, in light of their previous request that this be the export price, and in light of other administrative precedent available to ADC in this regard.

C “Level of trade” as an adjustment in the existing situation

In DSM's EQ response, in relation to the issue of differences in trade levels, DSM stated that it did not have any sales channel to Australia:

B-3 Do your export selling prices vary according to the distribution channel identified? If so, provide details. Real differences in trade levels are characterised by consistent and distinct differences in functions and prices.

[CONFIDENTIAL TEXT DELETED – details of commercial relationship with third party]

Further, in relation to the need to make any adjustment for the differences arising from the different trade levels between GSG's export sales and DSM's domestic sales, DSM stated:

[CONFIDENTIAL TEXT DELETED – details of commercial arrangement]

DSM's EQ response was made on the basis that GSG was the exporter of the goods, and in that context “level of trade” argumentation was not a critical consideration for DSM. The comments were also directed towards SG&A differences between sales and not towards pure “level of trade” adjustments.

However, in light of the approach now adopted by ADC in its visit reports and in working out the dumping margin as stated in its Preliminary Affirmative Determination (“PAD”), DSM has had very significant cause to further review the data relating to the its domestic sales of like goods.

DSM submits that two level of trade (“LOT”) adjustments must be made to ensure a fair comparison between the so-called DSM “export price” and DSM's normal value. The LOT differences are evident in all of the information previously provided to and verified by ADC. They are carefully identified and explained at B.1 and B.2 below.

ADC's dumping margin has been arrived at by using the price of an ex-factory acquittal of the goods concerned to GSG at a base price [CONFIDENTIAL TEXT DELETED – details of commercial arrangement between DSM and GSG in relation to goods exported to Australia by GSG] as the “export price” of the goods concerned. This price was [CONFIDENTIAL TEXT DELETED – details of commercial arrangement between DSM and GSG in relation to goods exported to Australia by GSG]. The evidence clearly attests to the fact that both DSM and GSG consider DSM [CONFIDENTIAL TEXT DELETED – characterisation of DSM as instrument of GSG so far as GSG's exports to Australia concerned], and that DSM is the “instrument” of GSG in relation to those sales. This rudimentary export price has then been compared with DSM's domestic sales to distributors and end-users in Korea, which are fully negotiated, fully sales-assisted, and “stepped” in terms of their respective profitability.

We further explain the irregularities in the position which has presently been adopted by ADC, and the mechanisms for the necessary adjustments, below.

1 LOT 1 - differences between DSM's distributor sales and end-user sales

DSM sold plate steel on the domestic market to three sales channels: distributors, non-related end-users and related end-users. As advised during the verification, the volume of sales to related end-users was minimal, accounting for [CONFIDENTIAL TEXT DELETED – number]% of DSM's total domestic sales of

like goods.

The verified data relating to the domestic sales of like goods by DSM indicates that [CONFIDENTIAL TEXT DELETED – pricing differences between levels of trade]. This is demonstrated in the graph and table below:

[CONFIDENTIAL CHART DELETED – showing consistent levels of trade]

	Weighted average EXW unit price to distributors	Weighted average EXW unit price to end user	Percentage difference between the two LOTS
Q1	[CONFIDENTIAL TEXT DELETED – numbers]		
Q2			
Q3			
Q4			
Total			

Source: ADC dumping calculation spread entitled “CA3 – Domestic Sales”

As indicated in the graph and table above, [CONFIDENTIAL TEXT DELETED – pricing differences in relation to levels of trade]. The weighted average price difference over the period of investigation between the sales to distributors and non-related end users was [CONFIDENTIAL TEXT DELETED – number] %.

Therefore, DSM submits that there is a LOT difference (“LOT 1”) between the sales to non-related end-users and distributors as identified by the comparison of prices to these different market segments.

DSM and GSG stated in their joint submission, in relation to the comparison of the prices of export sales and domestic sales, that:

On the basis that GSG is the exporter – as we have insisted – GSG’s export prices will then be compared with DSM’s sales to distributors and end users on the domestic market.

Those export prices and domestic sales are at the same “level”. DSM’s home market sales to distributor’s/end-users incorporate sales and marketing expenses and profit on these activities, in the same way as GSG’s sales to Australia incorporate GSG’s sales and marketing expenses and profit on these activities.

DSM concedes that this statement is incorrect, because there is a LOT difference between DSM’s sales to distributors and to end users. Accordingly, had GSG been classified as the exporter, then it would have been open for GSG to claim a downwards adjustment (LOT 1 of [CONFIDENTIAL TEXT DELETED – number] %), as shown above) to those sales in the universe of DSM’s domestic sales used for normal value purposes that were to end users. However the verified evidence is clear, and DSM has only now been required to focus more intently on these aspects of the margin calculations given the drastic impact they have had on it.

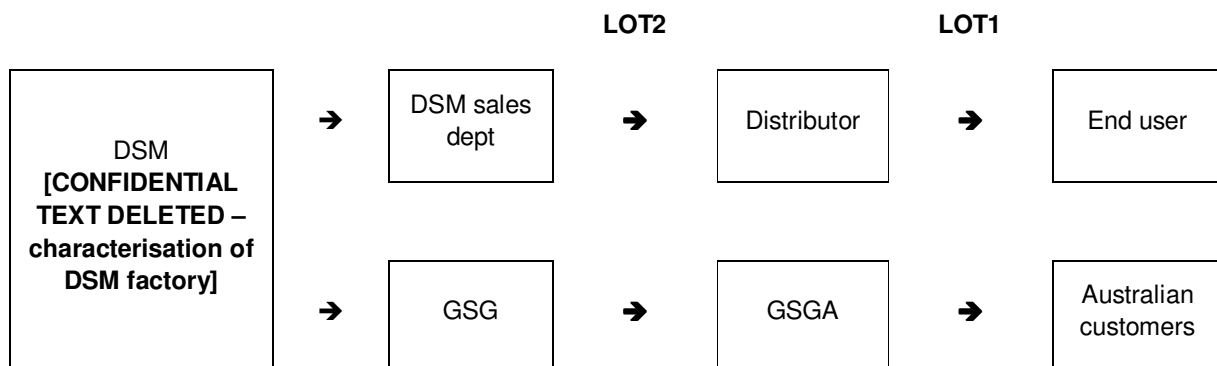
[CONFIDENTIAL TEXT DELETED – detailed methodology to account for the level of trade adjustment required and the effect of the adjustment on normal value]

2 LOT 2 - differences between DSM's distributor sales level and sales to GSG

The next LOT adjustment that must be addressed – in the work-back to the same level as DSM's sales to GSG – is the difference between DSM's *distributor* level sales and DSM's *ex-factory acquittal* sales to GSG ("LOT 2"). The level of trade for sales made by DSM to GSG, when comparing to the sales made by DSM to distributors, are clearly at a much lower level. Sales activities are minimal or non-existent. As stated in the joint submission and verified by ADC:

- [CONFIDENTIAL TEXT DELETED – how prices are determined in ordering by GSG] *for the purchase of the goods destined for Australian market;*
- *DSM carries out no marketing or sales activities, either in its sale to GSG (which is an ex-factory acquittal to GSG, and is quite different to the marketing-supported and price-negotiated sales that DSM makes to domestic distributors and end-users) or in relation to GSG's sales to its Australian customer*

The visit reports also accept that these observations are correct. Therefore, the sales from DSM to GSG, in the nature of ex-factory acquittals, are at a lower level when compared to DSM's domestic sales to distributors. The level of trade for DSM's sales to GSG, in comparison to DSM's sales to domestic distributors and end-users, can be illustrated as follows:



Having established that a LOT 2 adjustment is called for, the question which arises is the way in which it should be calculated. The *Dumping and Subsidy Manual* provides the mechanism by which this is to be done. In dealing with "level of trade" the Manual advises, in the event that a trader is found to be an exporter, that "*an adjustment may be required to the domestic sales prices*". The Manual states that if such adjustment is required it may be made on the basis of the trader's margin. The example provided in the Manual envisages a scenario where the "*margin of the exporter/trader*" needs to be *added* to the domestic sales prices – clearly this is based on the presumption that the export sales by the trader to the importer are at a *higher* level in comparison to the relevant domestic sales used for determining normal value.

Applying the same logic, this method of adjustment would be equally applicable to a situation where the export sales by the trader (in the position of "exporter") are at a *lower* level when compared with the domestic sales. In this scenario the adjustment based on the trader's margin would be a *deduction* from the domestic sales prices. In a circumstance in which ADC considers DSM to be the exporter, and with the ex-factory acquittal price being the export price, that logic carries through. The point of comparison set by ADC in this situation is at the level of the ex-factory acquittal prices from DSM [CONFIDENTIAL TEXT DELETED – characterisation of DSM re GSG's Australian sales] to GSG. LOT 1 is required to

work-back the universe of DSM domestic sales to the level of a sale to GSG but it only goes to the level of a distributor level sale by DSM. *DSM's sale to GSG is at a lower level than that.* LOT 2 is then required to work-back to the lower level of the ex-factory acquittal to GSG. In this situation, and as per the Manual's insistence on the *addition* of a trader margin in the reverse situation, GSG's margin can be *deducted* from the post LOT 1 normal values in determining the final normal value. In this way the fair comparison required by the Act and the Anti-Dumping Agreement will be observed.

As advised in the joint submission, the amount realised by GSG on sales of DSM plate steel was [CONFIDENTIAL TEXT DELETED – number]% over the period of investigation (please see Attachment D to the joint submission).¹

3 Summary

Accordingly, we submit that adjustments must be made in determining normal value – on the basis that DSM's ex-factory acquittal to GSG is the "export price" - as follows:

- (a) a downward adjustment of [CONFIDENTIAL TEXT DELETED – number]% to be applied to DSM's end-user sales, to account for the difference with the distributor sales;
- (b) the use of the OCOT profitability of distributor level sales as the profit added to the cost to make and sell in the constructed normal values; and
- (c) a downward adjustment of [CONFIDENTIAL TEXT DELETED – number]% to be applied to all post LOT 1 normal values, to account for the level of trade differences between DSM's sales to GSG and DSM's sales to its domestic customers.

ADC has the information pertaining to the amount of these adjustments, all of which has been verified and accepted as being accurate and comprehensive.

D Conclusion

We reiterate our primary position that GSG is the exporter of the goods in the circumstances of this case.

If ADC is not prepared to accept that proposition, our clients request:

- the alternative approach of using the price paid by the importer as the export price referred to in Section B above – an approach which is available to the Minister and which is justified in the circumstances of this case; or
- the adjustment methodology referred to in Section C above - to ensure a proper comparison.

Yours sincerely



Daniel Moulis
Principal

Yours sincerely



Charles Zhan
Solicitor

¹ This adjustment does not adequately reflect the level difference required, in view of the fact that it is a trader margin (as per the Manual) and is not a price difference adjustment (as is the case with LOT 1). Nonetheless our clients have framed their request in terms of the Manual.