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commercial+international

**Mr Graham McDonald**  
**Member**  
**Anti-Dumping Review Panel**  
**c/- Legal Services Branch**  
**Australian Customs and Border Protection Service**  
**5 Constitution Avenue**  
**Canberra**  
**Australian Capital Territory 2601**

**By email**

Dear Mr McDonald

## **GS Global Corporation**

### **Review of Ministerial decisions concerning hot rolled plate steel**

This submission is made on behalf of GS Global Corporation ("GSG"), under Section 269ZZJ of the *Customs Act 1901* ("the Act").

The matters to which it refers are the subject of the review initiated by the Anti-Dumping Review Panel ("the Review Panel") concerning hot rolled plate steel ("plate steel") exported from Korea ("the review").

The public notice announcing the initiation of the review was published on 3 February 2014.

#### **A Introduction**

GSG has set out its position in relation to the matters raised for the ADRP's consideration in this review in its application dated 20 January 2014 ("the Application").

Two key issues were raised in the Application, namely:

- GSG was the exporter of the goods manufactured by Dongkuk Steel Mill Co., Ltd ("DSM") and exported by GSG to Australia during the investigation period, DSM was not the exporter; and
- even if DSM is regarded as the exporter, the export price used to determine the dumping margin should nonetheless be the price charged by GSG and paid by the Australian importer, GSG Australia.

In relation to the first point, GSG's application adopted and incorporated the reasons advanced by DSM in its application to the ADRP of even date, and included DSM's application documents as Attachment D of the Application. GSG advised that those reasons stated in Attachment D are similarly GSG's reasons for its belief that the reviewable decision was not the correct or preferable decision.

In this submission, GSG takes the opportunity to further highlight some of the key information about the factual circumstances of the exportation as was presented to the Anti-Dumping Commission ("ADC") by GSG and/or by DSM during the investigation.

**NON-CONFIDENTIAL VERSION**

## B GSG as the exporter of the goods

GSG reiterates that GSG only considers itself to have been the exporter in relation to the goods manufactured by DSM and exported by GSG during the investigation period. On the other hand, GSG does not claim to be the exporter of all of the goods it sold to Australia from Korea during the investigation period.

This distinction is important, because it underlines the factual integrity of GSG's argument. The proposition put forward by DSM and by GSG is that it is the particular factual circumstances involved in any particular exportation that will identify the exporter.

GSG sold both DSM-manufactured and **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is the identity of another manufacturer]** products to Australia during the investigation period. However GSG only considers itself to have been the exporter of the goods in relation to its sales of DSM-manufactured products to Australia during the investigation period.

Through ourselves – acting as a “clearing house” for the confidential information of each party - GSG and DSM made a joint submission to the ADC dated 20 May 2013 (“joint submission”). In that joint submission, GSG's unique role as the exporter of the DSM-manufactured products to Australia was contrasted with GSG's activities in its sales of the goods to Australia as a trader or agent on behalf of **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is the identity of another manufacturer]**, in relation to which GSG did not claim to be the exporter of the goods.

The joint submission will be accessible to you in the documents handed to you by the ADC for the purposes of this review. As advised in that joint submission, where GSG was acting as a mere trader, GSG engaged itself in the sales process in a vastly different way compared to its sales of DSM-manufactured plate steel, where it acts as the exporter.

In relation to price negotiation and other activities in the sales process, for GSG's sales of **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is the identity of another manufacturer]**-manufactured product:

- GSG acted **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is a characterisation of GSG as a mere facilitator in price negotiation between the manufacturer and the Australian customer]** and the Australian customer;
- GSG **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is evidence of GSG's minimal involvement in the pricing decisions]**;
- GSG entered into a sales contract with **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is a characterisation of GSG as a mere facilitator in the export sales process]**;
- the price from **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is evidence of GSG's minimal involvement in the pricing decisions and GSG's profit behaviour as a mere facilitator]**.

For GSG's exports of DSM-manufactured products:

- GSG actively negotiated the prices with the Australian customer, indeed GSG was solely in charge of the export price determination, acting as an exporter rather than a mere trade facilitator;
- GSG **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is confidential pricing information]**accepted by DSM;

- GSG [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is evidence of GSG taking the responsibility as the exporter of the goods] with GSG's Australian customer;
- [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is confidential pricing and evidence that DSM did not involve itself in Australian sales], and DSM does not know about the price of the sale by GSG to the Australian customer.

GSG's role as the exporter of DSM-manufactured products is further demonstrated when contrasted with the different profit behaviour and risk assumptions that GSG adopted as a mere trader or agent in the sales of [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is the identity of another manufacturer] products. As advised in the joint submission, during the investigation period GSG's profit on the sales of [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is the identity of another manufacturer]-manufactured product was in [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is profitability]. This reflects a [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is a characterisation of GSG as a mere trader in the sales of non-DSM manufactured products to Australia]. It also reflected the fact that [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is the identity of another manufacturer] acted as, and considered itself to be, the exporter of its goods, thereby setting the price at [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is confidentiality pricing and characterisation of GSG as a mere trader in the sales of non-DSM manufactured product to Australia]. On the other hand, as a mere trader, GSG also [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is evidence of GSG's involvement as a mere trader in sales of non-DSM manufactured product to Australia].<sup>1</sup>

In comparison, for GSG's exports of DSM-manufactured products, where GSG acted as the exporter of the goods, the amount realised by GSG on sales of DSM plate steel [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is profitability and characterisation of GSG as the exporter of the goods in sales of DSM manufactured products to Australia]. At the same time, GSG also assumed [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is evidence of GSG taking the responsibility as an exporter rather than a mere trader in sales of DSM manufactured product to Australia]. These are the necessary functions and characteristics of an exporter in the exportation process, not a mere trader.

These comparisons demonstrate the sharp differences in the activities, responsibilities and functions performed by GSG when acting as an exporter of DSM-manufactured goods and that of GSG as a mere trader of [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is the identity of another manufacturer] manufactured goods. For sales of [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is the identity of another manufacturer]'s products, GSG facilitated the sales process and obtained a [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is characterisation of GSG as a mere trader in sales of non-DSM manufactured product to Australia] service fee. For exports of DSM-manufactured products, GSG took the full risk and responsibilities in negotiation, marketing, price setting and currency exchange. These are the functions of an exporter. For its part, DSM was merely a [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is a characterisation of DSM as instrument of GSG so far as GSG's exports to Australia are concerned]. Further, GSG did not perform these functions "on behalf of" DSM. GSG conducted the export business in its own right, as the exporter of the goods, and therefore enjoyed [CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is a characterisation of GSG as the exporter of the DSM manufactured product and regarding DSM as instrument of GSG so far as GSG's exports to Australia are concerned] in the exportation of the DSM manufactured goods.

<sup>1</sup> DSM and GSG joint submission, page 6.

The legislative background and the significance of the exporter/export price determination are discussed in detail at Attachment D of the Application.<sup>2</sup> The identification of the exporter involves a comprehension of the factual circumstances surrounding the exportation, within the legislative context of the *Customs Act 1901* (“the Act”). It is not an exercise directed towards identifying the “manufacturer” of the goods, nor is it an exercise to identify the “manufacturer who knows” that the goods will ultimately be exported. These concepts are not the tests for deciding which party should be considered as the exporter under the Act, and have not been endorsed by the Federal Court in its interpretation of the meaning of exporter under the Act.

GSG respectfully submits that the circumstances involved in its arrangement with DSM, and GSG's role in the exportation of DSM-manufactured plate steel to Australia during the investigation period constituted GSG as the exporter of the goods. On a proper consideration of those circumstances, GSG maintains that the correct and preferable decision is that GSG was the exporter of the goods concerned.

### **C Export price**

As submitted in the Application, GSG maintains that the export price should be determined on the basis that GSG was the exporter of the goods manufactured by DSM and exported by GSG to Australia during the investigation period. GSG further submitted that, in any case, if DSM was to be regarded as the exporter, the export price used to determine the dumping margin should nonetheless be the price charged by GSG and paid by the Australian importer.

GSG considers that it has already provided a detailed analysis and explanation regarding this aspect of its Application. Nonetheless, GSG would like to highlight a few points in this regard:

- the export price as recommended to the Minister by the ADC was determined at a place which does not represent the price for taking the goods out of Korea and into Australia, is far removed from the Australian market, and does not reflect the price that importers actually pay on importation of the goods;
- GSG is not an importer of the goods - instead, GSG exported the goods to the Australian customer with an **[CONFIDENTIAL TEXT DELETED – to allow a reasonable understanding, the deleted information is profitability]**.

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GSG appreciates the opportunity to provide its comments and views in the review process. When the circumstances of GSG's exportation of the DSM-manufactured goods to Australia during the investigation period are fully taken into account, GSG respectfully submits that it should be readily apparent that the correct and preferable findings are that:

- DSM was not the exporter of the goods during the investigation period; and
- GSG was the exporter of the goods manufactured by DSM and exported by GSG to Australia during the investigation period;

If it is not accepted that GSG was the exporter of the goods GSG requests that, having regard to all the circumstances of the exportation, the export price should be determined using the price charged by GSG

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<sup>2</sup> GSG Application Attachment D, pages 5 to 7.

for the goods manufactured by DSM to its Australian customer, being the price paid by the importer of the goods.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Zhan', with a long, sweeping horizontal stroke extending to the right.

**Charles Zhan**  
Lawyer