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Anti-Dumping Review Panel
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Dear/Sir Madam

Atpac Group Pty Ltd Submission in relation to ADRP review of a decision made by the Assistant Minister for Science dated 17 March 2016 pursuant to section 269ZDBH(1) of the *Customs Act 1901* (Cth)(the Act) to alter original notices under sections 269TG(2) and 269TJ(2) of the Act as they relate to hollow structural sections exported from China by Roswell S A R L Limited

We refer to Atpac Group Pty Ltd's (**Atpac**) application to the Anti-Dumping Review Panel (**ADRP**) dated 18 April 2016 and its "Statement setting out grounds" contained within (**Atpac's Statement**). Our client has now instructed us to make the following additional submissions (**Submission**). Terms in this Submission have the same meaning as in Atpac's Statement.

1. **Atpac endorses submissions made by interested parties in relation to the inequity of the alteration of the original notices being backdated to 11 May 2015**
 - (a) Atpac refers to the "Second ground" of GP Marketing International Pty Ltd's application to the ADRP dated 18 April 2016 and to "Finding 3" of Steelforce Trading Pty Ltd's application to the ADRP of the same date and wholly endorses the arguments contained in those submissions.
 - (b) Atpac submits that backdating the alteration of the original notices to take effect from 11 May 2015 was not "*the most effective remedy to the Australian industry under the terms of the legislation*".¹
 - (c) Atpac submits that a standard is set in Article 10 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in relation to anti-dumping duties. The standard is that anti-dumping duties shall only be applied to products which enter for consumption after the date that the dumping duty notice comes into force, subject to certain exceptions.
 - (d) Atpac submits that a similar standard should apply to the *alteration* of dumping duty notices following the outcome of an anti-circumvention inquiry under section 269ZDBH of the Act. That standard would provide that following an anti-circumvention inquiry, anti-dumping duties will only be applied to products which enter for consumption after the date of *alteration* of the dumping duty notice, unless certain exceptions apply.
 - (e) The Minister undoubtedly has the power under subsection 269ZDBH(8) of the Act to apply anti-dumping and countervailing duties retrospectively from the date that notice of the initiation of an anti-circumvention inquiry is published. However, Atpac submits that the Minister should only exercise that power if it is necessary to prevent further, or the

¹ Anti-Dumping Commission Final Report No. 291, pg. 59.

recurrence of, injury to the Australian industry. With respect, the Commissioner did not provide adequate reasons in his Final Report why the Minister should have exercised those powers in relation to the Goods.

- (f) Atpac also refers to the submissions noted in paragraph 1(a) of this Submission and further submits that a distinction should be drawn between anti-circumvention activities which involve intentionally evasive conduct and those which do not. Atpac submits that anti-circumvention activities which entail a degree of intention to circumvent existing measures, such as misrepresenting the origin of goods in shipping documentation, more appropriately warrant the imposition of retrospective duties on the relevant goods.
- (g) On the basis of the above submissions, Atpac's view is that the Minister's alteration of the original notices instead ought to have taken effect from the date of publication of her decision under subsection 269ZDB(1) of the Act on the Anti-Dumping Commission website, namely 18 March 2016..

2. **Atpac endorses submissions made by interested parties in relation to no "circumvention activity" having taken place in relation to the circumvention goods**

- (a) Atpac refers to the "First ground" of GP Marketing International Pty Ltd's application to the ADRP dated 18 April 2016 and wholly endorses the arguments contained within that ground.
- (b) Atpac submits that non-alloyed hollow structural sections cannot be "slightly modified" to enable the production of alloyed hollow structural sections. Rather, alloyed hollow structural sections are manufactured using distinct and separate metallurgical inputs.
- (c) Atpac further submits that regulation 48(2) of the Regulation provides that the prescribed circumstance amounting to the circumvention activity of *slight modification of goods exported to Australia* requires fulfilment of the criterion that "*before export, the circumvention goods are slightly modified*".²
- (d) Atpac submits that the *circumvention goods* for the purpose of regulation 48(2) of the Regulation, and as described by the Commissioner in Final Report 291, are the alloyed hollow structural sections.³ They are not the non-alloyed hollow structural sections subject to the dumping duty notice.
- (e) Therefore, it cannot be said that the alloyed hollow structural sections have been slightly modified at any time - they are the finished export product. Atpac respectfully submits that the test contained in regulation 48(2) has not been satisfied and that the alteration to the original notices ought not to have been made by the Minister on the basis.

3. **Error in the import data relied on by the Commissioner**

- (a) Atpac refers to paragraphs [71] – [75] of Atpac's Statement and advises that the Full Import Declaration (FID) referred to in those paragraphs, which was lodged with the Department of Immigration and Border Protection on 2 October 2013, has now been amended to reflect the correct classification (7306.50.00) of the Goods.
- (b) Accordingly, this now reflects that Roswell S A R L Limited (Roswell) has never exported non-alloyed hollow structural sections to Atpac contrary to the Commissioner's findings at part 6.7.2.2 of the Final Report.
- (c) A copy of the amended FID was provided to the ADRP by email on Monday 2 May 2016 which evidences that the Goods imported by Atpac on 2 October 2013 have now been correctly classified to tariff subheading 7306.50.00.

² Customs (International Obligations) Regulation 2015 (Cth) r 48(2)(b).

³ Anti-Dumping Commission Final Report No. 291, pg. 6.

4. **The general physical characteristics of the Goods**

- (a) Atpac refers to paragraphs [55] – [59] of Atpac's Statement and provides to the ADRP, to be shown on the public record, illustrative descriptive material of the Goods imported by Atpac and exported from China by Roswell during the inquiry period.
- (b) The illustrative descriptive material is attached to this Submission as "**Attachment A**".

Yours faithfully

A handwritten signature in black ink, appearing to be 'Andrew Hudson', with a stylized, sweeping underline.

Andrew Hudson
Partner

'Attachment A'









