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 MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY, MALAYSIA

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 Date :

Mr. Justin Wickes
 A/g National Manager
 International Trade Remedies Branch
 Customs House
 5 Constitution Avenue
 CANBERRA ACT 2601

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Dear Sir,

ANTI-DUMPING INVESTIGATION ON IMPORTS OF CERTAIN HOLLOW STRUCTURAL SECTIONS (HSS) INTO AUSTRALIA FROM MALAYSIA, THAILAND, PEOPLE'S REPUBLIC OF CHINA, REPUBLIC OF KOREA AND TAIWAN.

I would like to refer the above matter and the Preliminary Affirmative Determination No. 177 (PAD) published by the ACBPS on 23 December 2011 with regards to the anti-dumping investigation on imports of Certain Hollow Structural Sections (HSS) into Australia from Malaysia, Thailand, People's Republic of China, Republic of Korea and Taiwan

2. The Ministry of International Trade and Industry, Malaysia (MITI) would like to highlight the following issues:

Preliminary Dumping Assessment on Malaysia

Article 6.10 of the WTO Anti-dumping Agreement (ADA) states that:

.....*The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation...*

MITI noted that ACBPS has imposed a preliminary dumping margin of 15% to all Malaysian exporters/producers. ACBPS in its PAD report mentioned that two Malaysian producers have participated in the investigation by answering the exporter's questionnaire but only one preliminary dumping margin (15%) has been imposed to Malaysia. This is clearly inconsistent with Article 6.10 which emphasizes the authorities shall, as a rule determine an individual margin of dumping for each known exporter or producer. MITI views that ACBPS has violated the provisions under Article 6.10. There is no reason or explanation provided by

ACBPS on why the 15% dumping margin of one company is extended to the other despite the fact that two exporters have participated in the investigation. Furthermore, Article 6.10.1 of the WTO ADA also emphasizes that "any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned." ACBPS did not consult both exporters on this.

Article 6.10.2 of the WTO ADA states that:

... In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged...

Article 2.2.1.1 of the WTO ADA states that:

... Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer..

There are only two exporters from Malaysia that participate in this investigation. The number of exporters clearly cannot be categorized as large as cited in Article 6.10.2 of the WTO ADA. For that reason, there is no reason why the 15% dumping margin should be applied across the board on all Malaysian exporters and no individual dumping margin has been allocated to the participating Malaysian exporters which has cooperated with ACBPS and submitted a response to the questionnaire.

Australian Custom Regulations 1926

Part XV-B- Special provisions relating to anti-dumping duties, Division 2- Consideration of anti-dumping matters by the CEO, Section 269TD Preliminary affirmative determinations of the Australian Custom Regulations 1926 states that:

*.... (2) Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the CEO: (a) **must have regard to:** (i) the application concerned; and (ii) **any submissions** concerning publication of the notice that are received by Customs within 40 days after the date of initiation of the investigation; ...*

Based on the provision stated in Australian Custom Regulations 1926, it is clearly eminent that ACBPS should take into account all submissions by all parties in arriving to the decision stated

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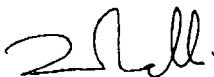
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in the PAD. However MITI felt that ACBPS has failed to do so in determining preliminary dumping margin for participating Malaysia's exporters.

3. In light of the arguments presented, MITI reiterates that the ACBPS did not carry out a fair and justified investigation in arriving to its decision in the preliminary affirmative determination. As such, MITI requests the observations highlighted be given serious consideration in arriving at the Final Findings. MITI reserves the right to raise this and any other issues concerning this investigation at a later date.



(MOHD RADHI ABD RAZAK)

Director

Trade Practices Division

For Secretary General

Ministry of International Trade and Industry, Malaysia.