

John O'Connor and Associates Pty Ltd

(ABN 39098650241)

PO Box 329

Coorparoo Q1.D 4151

Telephone: 07 33421921

Facsimile: 07 33421931

Mobile: 0411252451

Email: jmoconnor@optusnet.com.au

26 March 2012

Mr Geoffrey Gleeson
Director, Operations 3
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Gleeson

Public File

ATM Correspondence 2012/07 - HSS exported from China, Korea, Malaysia, Taiwan and Thailand - Investigation No. 177 - Arms Length Sales between Dalian Steelforce and Steelforce Trading

OneSteel Australian Tube Mills Pty Ltd ("OneSteel ATM") would like to highlight with Customs and Border Protection a number of relevant considerations appropriate to the determination of export prices between the Chinese exporter Dalian Steelforce Hi Tech Co., Ltd ("Dalian Steelforce") and Steelforce Trading Pty Ltd ("Steelforce Trading").

Steelforce Trading Importer Visit Report

OneSteel ATM notes from the recently published Steelforce Trading importer visit report that C&BP was "unable to verify whether the invoice price was the price paid (by Steelforce Trading) to Dalian Steelforce" and concluded that "the price between Dalian Steelforce and Steelforce Trading is influenced by their relationship and thus could not be considered to be arm's length". This latter point was determined as Dalian Steelforce's prices to Steelforce Trading had been modified in design to reflect its full cost to make and sell plus a profit following previous dumping cases i.e. the price was an internal transfer price construction rather than reflection of market dynamics.

Steelforce Trading was unable to provide C&BP with evidence of payment for selected transactions at the time of the verification visit by C&BP.

In its general comments to C&BP during the verification visit, Steelforce Trading argued that as Dalian Steelforce did not participate in the Chinese domestic market "it should be treated for the purposes of establishing normal value".

Comments Re Steelforce Trading Importer Visit Report

Steelforce Dalian is an exporter of HSS to which anti-dumping measures have previously applied (until revoked in March 2011)

¹ Refer Steelforce Trading Importer Visit Report, P.25

OneSteel ATM does not consider that C&BP can accept sales between Dalian Steelforce and Steelforce Trading during the investigation period as arm's length transactions.

Aside from the issue of the earlier measures, Steelforce Trading has been unable to provide C&BP with evidence of payment of selected sales for verification by C&BP. In the absence of evidence of payment of selected invoices, C&BP would surely conclude that the sales between the related exporter and Australian importer are not arm's length sales.

OneSteel ATM is alarmed that C&BP has considered that "subject to further investigations with the exporter, we consider that the price between Dalian Steelforce and Steelforce Trading may in any case be suitable for use in ascertain the export price between these parties...".

OneSteel ATM strongly disagrees and provides the 2011 ASIC returns for Steelforce Holdings Pty Ltd and Steelforce Australia Pty Ltd ("Steelforce Australia") as evidence that the related Steelforce entities in Australia have been trading the goods under consideration ("GUC") at losses throughout the investigation period.

The attached 2011 ASIC Return for Steelforce Australia Ltd evidences

- Steelforce Trading Pty Ltd is a wholly-owned subsidiary of Steelforce Australia Ltd.
- Steelforce Australia's "principal" activity as declared involves the "manufacture of steel pipe and tube products in China and the importation and distribution of steel products in Australia";
- In 2010 and 2011, Steelforce Australia's declared profit (loss) before income tax were (\$18.382M) and (\$9.19M) respectively.
- The 2011 loss includes a \$6M gain on debt forgiven by a "wholly owned subsidiary". The implication being the real profit (loss) for Steelforce Australia in 2011 was (\$15.19M).
- The referenced debt forgiven is [comment re debt source] (for purchases from Dalian Steelforce) for the non-payment of pipe and tube (i.e. HSS) exported to Australia.

The 2011 ASIC consolidated return for Steelforce Holdings Pty Ltd evidences

- Similar 'principal' activities to that listed by Steelforce Australia (although referencing New Zealand additionally).
- Profit (loss) before income tax of (\$10.4M) and (\$7.5M) in 2010 and 2011 respectively. This excludes Profit (loss) of (\$1.5M) on Fx translation in FY11).
- The company breached its banking covenants at 30 June 2011;
- The current financial facility (waiver negotiated in August 2011) is due to expire in April 2012.

Copies of the 2011 ASIC returns for Steelforce Australia and Steelforce Holdings are enclosed at Confidential Attachment 1 and 2 respectively.

Export sales of HSS

OneSteel ATM submits that export sales by Dalian Steelforce of the GUC were unprofitable for the overall Steelforce group. It is further submitted that it would appear Dalian Steelforce, Steelforce China or Steelforce Trading has waived a debt to Steelforce Australia (Steelforce Trading's parent company) for export sales of the GUC throughout the investigation period.

The referred \$6M debt forgiven to Steelforce Australia is likely not to have been considered by C&BP in its verification visit to Steelforce Trading, and was not identified during the importer visit to Steelforce Trading in considering the costs of goods exported to Australia during the investigation period.

Arm's length sales

It is OneSteel ATM's view that Steelforce Trading did not provide evidence of payment of the selected sales identified by C&BP throughout the investigation period as it could not evidence the referred payments. The identification of a debt "forgiven" of \$6M in Steelforce Australia's 2011 ASIC [comment re basis of debt] (exported by Dalian Steelforce) during the 12 months to June 2011.

The available information disclosed in Steelforce Trading's Importer Visit report suggests that Steelforce Trading did not provide C&BP with evidence of payment documents supporting the purchases of HSS from its related party supplier Dalian Steelforce. In Steelforce Australia's 2011 annual return to ASIC, the company declares a profit before income tax of (\$9.19M) that includes an amount of \$6M for a debt forgiven by a subsidiary company. The underlying loss for Steelforce Australia in 2011 was (\$15.19M).

OneSteel ATM was initially concerned that C&BP could not verify Steelforce Trading's purchases of HSS from Dalian Steelforce during the investigation period. These concerns have escalated as Steelforce Australia continues to incur significant losses on its principal trading activity of the manufacture and sales and distribution of pipe and tubes in Australia, and that the losses incurred have not been recognized in C&BP's verification of export prices by Dalian Steelforce's sales to Australia.

OneSteel ATM requests C&BP to review the sales transactions between Dalian Steelforce, Steelforce Trading, and Steelforce Distribution businesses and its customers to ensure that all appropriate costs and revenue are accurately reflected in the export selling price for goods exported to Australia.

Steelforce Trading's Chinese imports via N.Z.

Steelforce Trading has stated that some HSS produced by Dalian Steelforce originally exported to New Zealand "was then re-exported to Australia following quality issues in New Zealand". It has been argued that as the product entered the commerce of New Zealand, the "downgrade" goods "were not likely the goods" and not covered by the investigation.

OneSteel ATM respectfully rejects this conclusion. The Dalian Steelforce-sourced pipe and tube was exported to New Zealand and whilst it did enter the commerce of New Zealand, there is no indication that it was further worked or substantially transformed from its original state. The re-exported goods retain their Chinese origin and should not be re-classified to establish a circumvention precedent. The re-exported goods must be recognized as goods of Chinese origin and be included in Dalian Steelforce's exports to Australia.

Key Conclusions:

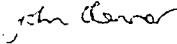
- 1) In the absence of domestic sales for Dalian Steelforce the only basis for Customs to establish whether export sales by Dalian Steelforce have been at dumped prices is to examine whether those sales have ultimately recovered the full cost to make and sell plus profit;
- 2) It is clear that sales between Dalian Steelforce and Steelforce Trading are not arms length. Steelforce Trading acknowledges the transfer price has been constructed based on a calculated cost to make and sell plus profit;
- 3) It is readily apparent from an examination of the Steelforce Australia and Steelforce Holdings accounts that the downstream sales of Steelforce Distribution and/or Steelforce Trading have been at substantial losses, and

PUBLIC
FILE
146

- 4) Any approach to establish a dumping margin by Customs must incorporate the losses incurred by Steelforce Australia into its downstream businesses including the sale or product freighted via New Zealand

If you have any questions concerning this submission please do not hesitate to contact me on (07) 3342 1921.

Yours sincerely



John O'Connor
Director

Cc **Stephen Porter, General Manager Sales – OneSteel Manufacturing**