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14 May 2012

**BY EMAIL**

Mr. Geoffrey Gleeson  
Director Operations 3  
Trade Measures Branch  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601  
AUSTRALIA

Re: SEF No. 177 - Antidumping Investigation on Certain Hollow Structural Sections Exported from the People's Republic of China, the Republic of Korea, Malaysia, Taiwan and the Kingdom of Thailand (our clients: *Shin Yang Steel Corporation and Yieh Phui Enterprise Co., Ltd.*)

Dear Mr. Gleeson,

On behalf of Shin Yang Steel Corporation ("Shin Yang") and its related company, Yieh Phui Enterprise Co., Ltd. ("Yieh Phui"), we hereby submit this comment on the Statement of Essential Facts No. 177 dated 23 April 2012 (the "SEF") in the above-captioned proceeding. We respectfully request the Australian Customs and Border Protection Services ("Customs and Border Protection") to exclude the sales of flood damaged pipe from the calculation of dumping margin for Shin Yang.

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As the Customs and Border Protection correctly found during the visit to Shin Yang and Yieh Phui, some hollow structural sections ("HSS") which Shin Yang/Yieh Phui sold to Australia during the investigation period had been damaged while in inventory during a flood in Taiwan in September 2010. The damaged inventory including the products intended for Australia was later sold to both Australia and the domestic market with reduced prices during the investigation period. In calculating the dumping margin for the purpose of the SEF, the Customs and Border Protection treated the flood damaged pipe as a separate model from the non-flood damaged pipe, and compared flood damaged pipe sold in the domestic market with that sold to Australia.

It is our position that the flood damaged pipe should be excluded from the dumping margin calculation in this proceeding because the flood damaged pipe is not the type of product that would be offered for sale in the ordinary course of trade.

Firstly, unlike the off-quality merchandise, the flood damaged pipe was caused by *force majeure* after the production was completed instead of Shin Yang/Yieh Phui's production deficiency. The flood damaged pipe was sold to Australia with reduced prices lower than the prices originally agreed upon when the orders were placed to Shin Yang/Yieh Phui as a result of a severe natural disaster which was beyond Shin Yang/Yieh Phui's reasonable foreseeability in operating its production facilities at the same location for decades.

Secondly, the reduced prices for flood damaged pipe do not represent the prices of the HSS that Shin Yang/Yieh Phui would normally sell to Australia and the inclusion of those sales of flood damaged pipe has created a distortion to the dumping margin because

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those sales are not sufficiently representative, as a part, in measuring Shin Yang/Yieh Phui's actual pattern in selling the product under investigation to Australia during the investigation period. In a previous antidumping investigation conducted by the Customs and Border Protection on the same product exported by Yieh Phui in 2006, Yieh Phui received a zero dumping margin, which supports that Yieh Phui was not engaged in a dumping trade pattern.

Nonetheless, in this proceeding the Customs and Border Protection calculated a preliminary dumping margin of 2.8% for Shin Yang/Yieh Phui by including the above-mentioned sales of flood damaged pipe in the SEF. Even though the flood damaged pipe accounted for a small proportion of sales to Australia during the investigation period, the dumping margin caused by the flood damaged pipe amounted to 1.9%. In other words, if the flood damaged pipe were excluded, the margin for Shin Yang/Yieh Phui would have been merely 0.9%, the dumping margin at a level which is considered *de minimis*.

Therefore, the use of only non-flood damaged pipe for dumping margin is a more appropriate method in measuring Shin Yang/Yieh Phui's actual trade behavior during the investigation period. In preparing the final report and considering the recommendation to the Minister of Home Affairs, we respectfully urge the Customs and Border Protection to re-calculate the dumping margin for Shin Yang/Yieh Phui by excluding the flood damaged pipe so to avoid the distortion as mentioned above.

Please let me know if you have any questions regarding this submission.

Sincerely,

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